

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 28

CLARIDGE APARTMENTS COMPANY, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 29

CLARIDGE APARTMENTS COMPANY, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 15, 1944.

CERTIORARI GRANTED MARCH 27, 1944.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No.

CLARIDGE APARTMENTS COMPANY, AN ILLINOIS
CORPORATION,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CLARIDGE APARTMENTS COMPANY, AN ILLINOIS
CORPORATION,

— *Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

**In the
United States Circuit Court of Appeals
For the Seventh Circuit**

CLARIDGE APARTMENTS COMPANY, AN ILLINOIS
CORPORATION,

No. 8296

vs.

Petitioner,

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

COMMISSIONER OF INTERNAL REVENUE,

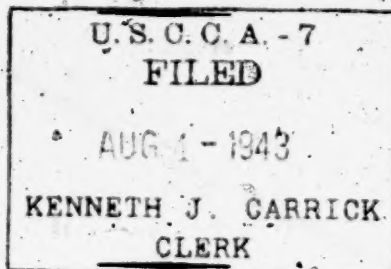
No. 8297

vs.

Petitioner,

CLARIDGE APARTMENTS COMPANY, AN ILLINOIS
CORPORATION,

Respondent.



Petition for Review of Decision of the Tax Court of the
United States.

In the
United States Circuit Court of Appeals
For the Seventh Circuit

CLARIDGE APARTMENTS COMPANY, AN ILLINOIS
CORPORATION,

Petitioner,

No. 8296

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

No. 8297

vs.

CLARIDGE APARTMENTS COMPANY, AN ILLINOIS
CORPORATION,

Respondent.

Petition for Review of Decision of the Tax Court of the
United States.

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Docket Entries.

1 Claridge Apartments Company, an Illinois Corporation,

Petitioner.

vs.

Commissioner of Internal Revenue,
Respondent.

Docket No. 106868.

Appearances:

For Taxpayer: Walter Hamilton.

For Comm'r: David Altman, George E. Gibson.

DOCKET ENTRIES.

1941

Apr. 11—Petition received and filed. Taxpayer notified. Fee paid.

Apr. 11—Copy of petition served on General Counsel.

Apr. 14—Request for Circuit hearing in Chicago, Illinois, filed by taxpayer. 4 11 41 copy served.

May 29—Answer filed by General Counsel.

June 5—Copy of answer served on taxpayer; Chicago.

1942

Jan. 13—Hearing set Feb. 24, 1942, in Chicago, Illinois.

Feb. 25—Hearing had before Mr. Oppen on merits. Submitted.

Feb. 26—Appearance of Walter Hamilton, Esq., filed. Briefs due 4 13 42. Reply Apr. 28, 1942.

Mar. 13—Transcript of hearing 2 25 42 filed. Pages 1-190, inc.

Mar. 13—Transcript of hearing 2 26 42 filed. Pages 191-231, inc.

Apr. 8—Brief filed by taxpayer.

Apr. 9—Motion for extension to May 13, 1942, to file brief filed by General Counsel. 4 10 42 granted.

May 11—Motion for extension to May 23, 1942, to file brief filed by General Counsel. 5 12 42 granted.

May 23—Brief filed by General Counsel. Copy served 5 25 42.

May 25—Copy of brief served on General Counsel.

June 5—Reply brief filed by taxpayer. 6 5 42 copy served on General Counsel.

Docket Entries.

June 10—Motion for leave to file the attached reply brief, reply brief lodged 6/9/42, filed, by General Counsel. 6/10/42 granted.

Dec. 4—Findings of fact and opinion rendered. Oppen. Decision will be entered under rule 50. Served 12/7/42.

1943

Jan. 1—Consent to settlement filed by taxpayer.

Jan. 4—Agreed computation of deficiency filed.

Jan. 5—Copy of consent served on General Counsel.

2 Jan. 9—Decision entered. Clarence V. Oppen, Div.

14.

Mar. 26—Petition for review by U. S. Circuit Court of Appeals, 7th Circuit, and statement of points filed by taxpayer.

Mar. 26—Notice of filing petition for review and statement of points sent to General Counsel filed.

Mar. 27—Proof of service filed.

Mar. 30—Petition for review by U. S. Circuit Court of Appeals, 7th Circuit, filed by General Counsel.

Mar. 30—Statement of points filed by General Counsel.

Mar. 30—Notice of filing petition for review and statement of points to Walter Hamilton filed.

Apr. 3—Proof of service filed.

Apr. 3—Certified copy of order from 7th Circuit requesting Exhibit No. 2 and No. 11 not be printed but considered part of the record and Tax Court to hold said exhibits until 10 days before this cause is argued, filed.

Apr. 10—Proof of service of filing petition for review and statement of points filed by General Counsel.

Apr. 10—Agreed statement of evidence filed.

Apr. 10—Joint designation of contents of record filed.

Apr. 12—Certified copy of order from the 7th Circuit re consolidation and decision upon a single consolidated transcript of record, consisting of such portions of the record made before the Tax Court as the parties herein may indicate by their joint designation, omitting any repetition of documents filed.

Apr. 16—Agreed statement of evidence approved and ordered filed.

PETITION.

(Filed April 11, 1941.)

The above named Petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue, in his notice of deficiency from the office of Internal Revenue in charge, Chicago Division, Room 1100, 105 West Adams Street, Chicago, Illinois, dated January 17, 1941, and as a basis of its proceeding alleges as follows:

1. The Petitioner is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office at 29 South La Salle Street, Chicago, Illinois. The returns for the periods herein involved were filed with the Collector of Internal Revenue for the district of Chicago, Illinois.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit 'A'") was mailed to Petitioner January 17, 1941.

3. The taxes in controversy are income and excess profits taxes for the calendar years of 1935, 1936, 1937, and 1938 and in the amount of \$3,289.74 income taxes and \$67.85 excess profits taxes.

4. The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

(a) The depreciation allowed to be deducted for the year 1935 was \$2,234.98, whereas, the amount of depreciation in the tax return of \$13,293.78 should have been allowed.

(b) The basis of the depreciation allowed for the calendar years 1935, 1936, 1937, and 1938 was the alleged market value of the property on the date it was acquired, August 1, 1935, whereas, the basis for such depreciation that should have been allowed was the basis of the cost of the building in 1924 to Claridge Building Corporation, the predecessor in title of Petitioner.

(c) The Internal Revenue Department of the United States erred in not holding that Petitioner took title in a tax free reorganization under the Internal Revenue's laws of the United States and was entitled to take as a basis for

depreciation the cost of the property to its predecessor in title.

(d) The Internal Revenue Department fixed the sum of \$132,500 as the fair cash market value of the apartment building on date of its acquisition by Petitioner whereas such value on that date was the sum of \$230,580.

(e) The Internal Revenue Department erred in allowing only the sum of \$5,580 as depreciation for the building for the calendar year of 1936 whereas it should have allowed the sum claimed in the return of \$14,071.48.

(f) The Internal Revenue Department erred in allowing only the sum of \$5,580 as depreciation of the building for the calendar year of 1937 whereas it should have allowed the sum claimed in the return of \$14,040.81.

(g) The Internal Revenue Department erred in allowing only the sum of \$5,755.07 as depreciation of the building for the calendar year of 1938 whereas it should have allowed the sum claimed in the return of \$12,913.35.

(h) The Internal Revenue Department erred in not allowing the sum of \$1,681.04 for painting and decorating and repairs as a deduction on the return of the taxpayer for the year ending December 31, 1937 and in disallowing the same and in not allowing a total sum of \$4789.41 for painting and decorating as a deduction for that taxable year and a total sum of \$1819.37 for repairs and maintenance for that year as claimed by the taxpayer.

5. The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

(a) Claridge Building Corporation, an Illinois Corporation, was the owner of the building and lots known as 5 4501 Malden Street, Chicago, Illinois on March 25, 1924. The building is of brick, built in 1924 at a cost of \$424,609.19 with an estimated life of thirty-three and one-third years and consists of twenty-six, three room apartments, eighty, two room apartments and four shops and approximately 81,345 cubic feet.

(b) On March 25, 1924, 6 1/2% first mortgage bonds in the principal amount of \$340,000 were issued and sold, secured by a first mortgage or trust deed on said premises. On September 9, 1931 said bonds had been paid except for \$277,000 principal amount then outstanding. On October 1, 1931 the Trustees of the bond issue filed his bill to foreclose the mortgage. A decree of foreclosure was entered on February 19, 1932 but no sale was had under the decree.

(c) On September 9, 1931 a committee, known as the

Claridge Apartments First Mortgage Bondholders' Committee, was organized under a deposit agreement of that date.

(d) On June 16, 1934, the said Claridge Building Corporation filed its petition in the District Court of the United States for the Northern District of Illinois, Eastern Division as case ~~56230~~ for a reorganization of said property under Section 77B of the Federal Bankruptcy Act as amended.

(e) A plan of reorganization in such case was submitted on November 27, 1934 by said Claridge Apartments First Mortgage Bondholders' Committee, said Minnie H. Case and said Claridge Building Corporation. The said Committee then had on deposit under said agreement \$258,600 face value of the total of \$277,000 said first mortgage bonds or approximately 93% thereof, the holders of which through said Committee consented and voted for the plan of reorganization. Minnie H. Case was the title holder of said premises for the use and benefit of said Claridge Building Corporation.

(f) Said plan of reorganization as modified was approved and confirmed by the court by final decree entered in said case on the 14th day of May, 1935. By said plan as approved and confirmed by the court the Petitioner was organized under the laws of the State of Illinois with a capital stock consisting of 3,080 common shares without par value. Minnie H. Case owned then 198 shares,

Howard D. Henry owned one share and Albert A. Henry one share of said Claridge Building Corporation. All the stockholders of Claridge Building Corporation consented to and voted for said plan. No creditor voted against it. There were no creditors except for taxes, or foreclosures and reorganization expenses which were all paid. Minnie H. Case and said Claridge Building Corporation conveyed title to said premises to Petitioner, August 1, 1935.

(g) 2,770 of said shares of Petitioner or 90% thereof, were issued to three trustees appointed by the Court for the holders of \$277,000 par value of bonds. All bondholders received or were authorized to receive trust certificates. Each certificate was for one share for each \$100 of bonds held by each bondholder. The balance of the said shares or 308 were issued to Minnie H. Case or her nominee or ten per cent thereof, Case receiving 300 shares and one Charles F. Henry 8 shares all under the plan of reorgani-

Petition.

zation. Two shares remained unissued. The Trustees held the shares under a ten year trust which was terminated at the end of two years and the shares issued to the bondholders, applying one share for each trust certificate, representing \$100 face value of bonds. The trust deed was released and the bonds cancelled by order of court.

(h) All expenses of reorganization, back taxes and claims were paid by Petitioner and for that purpose a first mortgage of \$18,500 was placed on said premises by Petitioner. Petitioner assumed all obligations of the old corporation, of the trustee under the trust deed who was in possession and all claims allowed in the case. The balance of such expenses and claims were paid in cash.

(i) Petitioner was incorporated under the laws of the State of Illinois on May 28, 1935 and took title to said premises under the plan of reorganization on August 1, 1935.

(j) The fair market value of said building on said premises on August 1, 1935 was the sum of \$230,580.

Wherefore, the Petitioner prays that the Board may hear the proceedings and redetermine the deficiency set forth by the Commissioner of Internal Revenue in said notice of deficiency and enter a finding and judgment of no tax due from Petitioner to the respondent.

Claridge Apartments Company,
by Walter Hamilton,

Secretary.

29 South La Salle Street
Chicago, Illinois

State of Illinois }
County of Cook } ss.

Walter Hamilton, being first duly sworn on oath, says that he is the secretary of Claridge Apartments Company, the Petitioner above named, and is duly authorized to verify the foregoing Petition; that he has read the foregoing Petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief and those he believes to be true.

Walter Hamilton.

Subscribed and sworn to before me this 9th day of April, A. D. 1941.

(Seal)

Arthur Chittick,
Notary Public.

EXHIBIT "A"

TREASURY DEPARTMENT
Internal Revenue Service
Chicago, Illinois

Office of Internal Revenue Agent
in Charge, Chicago Division.
Room 1100, 105 West Adams Street

January 17, 1941

Claridge Apartments Company,
29 South La Salle Street,
Chicago, Illinois.

Sirs:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1935, 1936, 1937 and 1938 discloses a deficiency of \$3,289.74 and that the determination of your excess profits tax liability for the years mentioned discloses a deficiency of \$67.85 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Chicago, Illinois for the attention of SN:IT. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

Guy T. Helvering,
Commissioner.

By (signed) E. C. Wright
Internal Revenue Agent in Charge.

Enclosures:

Statement, Form of Waiver
Form 272M.

Exhibit A.

Statement

SX:IT

Claridge Apartments Company,
29 South La Salle Street,
Chicago, Illinois.

Tax Liability for the Taxable Years Ended December 31,
1935, 1936, 1937 and 1938

Income Tax

Year	Liability	Assessed	Deficiency
1935	\$ 844.39	\$None	\$ 844.39
1936	706.92	None	706.92
1937	752.76	None	752.76
1938	1,348.68	363.01	985.67
Totals	\$3,652.75	\$363.01	\$3,289.74

Excess-profits Tax

1935	\$ 57.05	\$None	\$ 57.05
1938	10.80	None	10.80
Totals	\$ 67.85	\$None	\$ 67.85

In making this determination of your income and excess-profits tax liability, careful consideration has been given to the report of examination dated January 30, 1940; to your protest dated March 6, 1940; and to the statements made at the conferences held on March 26, 1940; May 20, 1940; July 9, 1940 and October 11, 1940.

If you do not acquiesce in all of the adjustments making up the deficiencies indicated, but desire to stop the accumulation of interest on that part of the deficiencies resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amount of the deficiencies you desire to have assessed at once. The execution of the form for the agreed portion of the deficiency will not deprive you of your right to petition the United States Board of Tax Appeals for a redetermination of the deficiencies.

Exhibit A.

9

10 Taxable Year Ended December 31, 1935

Adjustments to Net Income

Net loss as disclosed by return.....	\$ 6,425.18
Unallowable deductions and additional income	
(a) Depreciation	\$10,968.80
(b) Taxes	1,597.42 12,566.22
Net income adjusted.....	\$ 6,141.04

Explanation of Adjustments

(a) The deduction claimed in your return in the amount of \$13,293.78 as depreciation has been adjusted to \$2,324.98 and the sum of \$10,968.80 has been disallowed as excessive depreciation. It has been determined that your basis for depreciation on the apartment building was the fair market value of the property on the date you acquired it, August 1, 1935, or \$132,500. Your basis for the furniture and fixtures has been determined to be the fair market value thereof on the date of acquisition, August 1, 1935, or \$1,400. The remaining life of the apartment building at the date of acquisition was twenty-five years, and the remaining life of the furniture and fixtures was five years. Accordingly, the following schedule shows the depreciation adjustments in accordance with the determinations made herein:

Depreciable Property	Date acquired	Adjusted Cost of Property	Depreciation Rate	Depreciation Allowable
Apartment building	8-1-35	\$132,500	4%	\$ 2,208.33
Furniture and Fixtures	8-1-35	1,400	20%	116.65
Total				\$ 2,324.98
Amount deducted per return				13,293.78

Excessive depreciation disallowed..... \$10,968.80

11 (b) The following taxes have been adjusted to the amounts accrued and deductible during the taxable

Exhibit A.

year under the provisions of section 23(c) of the Revenue Act of 1934:

	Amount Claimed	Amount allowable
Personal property tax.....	\$ 100.47	\$ None
Real estate Tax.....	1,736.95	None
Federal capital stock tax.....	None	240.00
Totals	\$1,837.42	\$ 240.00
Amount allowable	240.00	
Increase in income.....	\$1,597.42	

The real estate and personal property taxes were assessed prior to your organization, and since article 23(c) 1 of Regulations 86, interpreting section 23(c) of the Revenue Act of 1934, provides that taxes are deductible only by the person upon whom they are imposed, no deduction may be allowed.

A credit of \$5,000.00 representing 12 1/2% of the declared value of your capital stock for the year ended June 30, 1935, has been allowed in computing your excess-profits tax liability.

Computation of Tax

Net income as adjusted.....	\$6,141.04
Less:	
Interest on Liberty Bonds, etc.....	None
Balance subject to income tax.....	\$6,141.04
Income Tax at 13 $\frac{1}{4}$ %.....	844.39
Less:	
Taxes paid to a foreign country.....	None
Total income tax.....	\$ 844.39
Income tax assessed:	
Original 1936 list, account No. 864084.....	None
Deficiency of income tax.....	\$ 844.39
Net income for excess-profits tax computation	6,141.04
12 Less:	
12 $\frac{1}{2}$ % of \$40,000.00, value of capital stock as declared in your capital stock tax return for year ended June 30, 1935.....	\$5,000.00
Amount subject to excess-profits tax.....	\$1,141.04
Excess-profits tax 5% of \$1,141.04.....	\$ 57.05
Excess-profits tax assessed:	
Original 1936 list, account No. 864084.....	None
Deficiency of excess-profits tax.....	\$ 57.05

Taxable Year Ended December 31, 1936

Adjustments to Net Income

Net loss as disclosed by return.....	\$1,091.80
Unallowable deductions and additional income	
(a) Depreciation.....	8,491.48
Total.....	\$7,399.68
Nontaxable income and additional deductions	
(b) Taxes.....	427.72
Net income adjusted.....	\$6,971.96

Explanation of Adjustments

(a) The deduction claimed in your return in the amount of \$14,071.48 as depreciation has been adjusted to \$5,580.00 and the sum of \$8,491.48 has been disallowed as excessive depreciation. It has been determined that your basis for depreciation on the apartment building was the fair market value of the property on the date you acquired it, August 1, 1935, or \$132,500. Your basis for the furniture and fixtures has been determined to be the fair market value thereof on the date of acquisition, August 1, 1935, or \$1,400. The remaining life of the apartment building at the date of acquisition was twenty-five years, and the remaining life of the furniture and fixtures was five years. Accordingly, the following schedule shows the depreciation adjustments in accordance with the determinations made herein:

Depreciable Property	Date acquired	Adjusted Cost of Property	Depreciation Date	Depreciation Allowable
Apartment building	8 1 35	\$132,500	4%	\$ 5,300.00
Furniture and Fixtures	8 1 35	1,400	20%	280.00
Total				\$ 5,580.00
Amount deducted per return				14,071.48
Excessive depreciation disallowed				\$ 8,491.48

(b) The taxes shown below have been adjusted under the provisions of section 23(c) of the Revenue Act of 1936, as follows:

	Amount Claimed	Amount Allowable
(1) Real estate tax	\$4,399.02	\$4,842.39
Personal property tax	14.02	42.27
Totals	\$4,413.94	\$4,884.66
Amount claimed		4,413.94
Decrease in income		\$ 470.72

(2) Income has been increased under the provisions of section 23(c) of the Revenue Act of 1936 by the amount of \$43.00 which represents excessive capital stock tax deducted in 1936 as computed below:

Declared value for year ended June 30, 1936, per return	\$200,000.00
Add: Adjusted net income, year 1936	6,971.96

Total	\$206,971.96
Deduct: Dividend distributions (1936)	14,620.50

Adjusted declared value, June 30, 1937	\$192,351.46
Capital stock tax liability accruable	\$ 192.00
Capital stock tax claimed	235.00

Increase in income	\$ 43.00
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These two adjustments result in a net decrease in income of \$427.72.

14.

Exhibit A.

Computation of Tax

Income Tax

Normal Tax:

Taxable net income.....\$6,971.96

14 Less:

Excess-profits tax (paid or accrued).....None

Net income for normal tax computation.....\$6,971.96

Less:

Interest on U. S. obligations.....None

Normal tax net income.....\$6,971.96

8% of \$2,000.00 (Over 0 to \$ 2,000) \$ 160.00

11% of \$4,971.96 (Over \$2,000 to \$15,000) 546.92

Total normal tax.....\$ 706.92

Surtax on Undistributed Profits:

Taxable net income.....\$6,971.96

Less:

Excess-profits tax (paid or accrued).....\$ None

Normal tax \$ 706.92 706.92

Adjusted net income.....\$6,265.04

Less:

Dividends paid credit.....\$14,620.50

Undistributed net income.....\$ None

Total surtax.....\$ None

Normal tax 706.92

Total income tax (normal tax and surtax).....\$ 706.92

Less:

Foreign tax credit.....None

Balance of tax assessable.....\$ 706.92

Income tax assessed (normal tax and surtax):

Original 1937 list, account No. 863382.....None

Deficiency of income tax.....\$ 706.92

Taxable Year Ended December 31, 1937

Adjustments to Net Income

Net loss as disclosed by return.....	\$ 3,262.36	
Unallowable deductions and additional income		
(a) Painting and decorating; repairs	\$1,681.04	
(b) Taxes	509.20	
(c) Depreciation	8,460.81	10,651.05
Net income adjusted.....	\$ 7,388.69	

15 Explanation of Adjustments

(a) The deductions, claimed in the return for painting and decorating in the amount of \$1,291.44 and for repairs in the amount of \$389.60, have been disallowed since they do not constitute ordinary and necessary business expenses paid or incurred during the taxable year within the meaning of section 23(a) of the Revenue Act of 1936. The expenses disallowed herein were incurred during the year 1936 and were claimed as a deduction in your 1936 return.

(b) The following taxes have been adjusted to the amounts accrued and deductible during the taxable year under the provisions of section 23(c) of the Revenue Act of 1936:

	Amount Claimed	Amount Allowable
Real estate tax	\$4,997.44	\$4,582.74
Personal property tax	50.00	40.50
Federal capital stock tax	185.00	100.00
Totals	\$5,232.44	\$4,723.24
Amount allowable	4,723.24	
Increase in income	\$ 509.20	

(c) The deduction claimed in your return in the amount of \$14,040.81 as depreciation has been adjusted to \$5,580.00 and the sum of \$8,460.81 has been disallowed as excessive

Exhibit A.

depreciation. It has been determined that your basis for depreciation on the apartment building was the fair market value of the property on the date you acquired it, August 1, 1935, or \$132,500. Your basis for the furniture and fixtures has been determined to be the fair market value thereof on the date of acquisition, August 1, 1935, or \$1,400. The remaining life of the apartment building at the date of acquisition was twenty-five years, and the remaining life of the furniture and fixtures was five years. Accordingly, the following schedule shows the depreciation adjustments in accordance with the determinations made herein:

Depreciable Property	Date Acquired	Adjusted Cost of Property	Depreciation Date	Depreciation Allowable
Apartment Building	8 1 35	\$132,500	4%	\$ 5,300.00
Furniture and fixtures	8 1 35	1,400	20%	280.00
Total				\$ 5,580.00
Amount deducted per return				14,040.81
Excessive depreciation disallowed				\$ 8,460.81
The dividends paid credit allowable under the provisions of section 27 of the Revenue Act of 1936 has been recomputed as follows:				
16 Dividends paid during the taxable year				\$ 5,386.50
Dividend carry-over (\$14,620.50 \$6,265.04)				8,355.46
Total revised credit				\$13,741.94

Computation of Tax

Income Tax		
Normal Tax:		
Taxable net income	\$ 7,388.69	
Less:		
Excess-profits tax (paid or accrued)	None	
Net income for normal tax computation	\$ 7,388.69	
Less:		
Interest on U. S. obligations	None	
Normal tax net income	\$ 7,388.69	
8% of \$2,000.00 (Over 0 to \$ 2,000)	160.00	
11% of \$5,388.69 (Over \$2,000 to \$15,000)	592.76	
Total normal tax	\$ 752.76	
Surtax on Undistributed Profits:		
Taxable net income	\$ 7,388.69	
Less:		
Excess-profits tax (paid or accrued)	\$ None	
Normal tax	752.76	752.76
Adjusted net income	\$ 6,635.93	
Less:		
Dividends paid credit	13,741.96	
Undistributed net income	\$ None	
Total surtax	\$ None	
Normal tax	752.76	
Total income tax (normal tax and surtax)	\$ 752.76	
Less:		
Foreign tax credit	None	
Balance of tax assessable	\$ 752.76	
Income tax assessed (Normal tax and surtax):		
Original 1938 list, account No. 850894	None	
Deficiency of income tax	\$ 752.76	

17 Taxable Year Ended December 31, 1938

Adjustments to Net Income

Net income as disclosed by return	\$ 2,904.11
Unallowable deductions and additional income	
(a) Taxes	\$ 117.53
(b) Depreciation	7,158.28
Net income adjusted	\$10,179.92

Explanation of Adjustments

(a) The real estate and personal property taxes have been adjusted to the amounts accrued and deductible during the taxable year under the provisions of section 23(c) of the Revenue Act of 1938. Computation of the adjustment is as follows:

	Amount Claimed	Amount Allowable
Real estate tax	\$4,906.72	\$4,787.46
Personal property tax	38.77	40.50
Totals	\$4,945.49	\$4,827.96
Amount allowable	4,827.96	
Increase in income	\$ 117.53	

(b) The deduction claimed in your return in the amount of \$12,913.35 as depreciation has been adjusted to \$5,755.07 and the sum of \$7,158.28 has been disallowed as excessive depreciation. It has been determined that your basis for depreciation on the apartment building was the fair market value of the property on the date you acquired it, August 1, 1935, or \$132,500. Your basis for the furniture and fixtures has been determined to be the fair market value thereof on the date of acquisition, August 1, 1935, or \$1,400. The remaining life of the apartment building at the date of acquisition was twenty-five years, and the remaining life of the furniture and fixtures was five years. Accord-

Exhibit A.

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ingly, the following schedule shows the depreciation adjustments in accordance with the determinations made herein:

Depreciable Property	Date Acquired	Adjusted Cost of Property	Depreciation Date	Depreciation Allowable
Apartment building	8/1/35	\$132,500	4%	\$ 5,300.00
Furniture and Fixtures	8/1/35	1,400	20%	280.00
Refrigeration Equipment	1938	4,919.64 (as claimed)		175.07
Total				\$ 5,755.07
Amount deducted per return				12,913.35
Excessive depreciation disallowed				\$ 7,158.28

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Computation of Tax

Excess-profits Tax:

Taxable net income.....\$10,179.92

Less:

10% of \$100,000.00 value of capital stock as
declared in your capital stock tax return
for year ended June 30, 1938.....\$10,000.00

Net income subject to excess-profits tax.....\$ 179.92

5% of declared value of capital stock.....\$ 5,000.00

Balance.....\$ None

Excess-profits tax:

6% of \$179.92.....\$ 10.80

Total excess-profits tax.....\$ 10.80

Excess-profits tax assessed:

Original 1939 list, account No. 420125.....None

Deficiency of excess-profits tax.....\$ 10.80

Income Tax:

Taxable net income.....\$10,179.92

Less:

Excess-profits tax.....10.80

Adjusted net income.....\$10,169.12

Less:

Dividends received credit.....None

Special class net income.....\$10,169.12

Income Tax:

12 1/2% of \$5,000.00 (Not in excess of \$5,000.00).....\$ 625.00

14 % of \$5,169.12 (In excess of \$5,000.00 and
Not in excess of \$20,000.00).....723.68

Total income tax.....\$ 1,348.68

Less:

Taxes paid to a foreign country.....None

Balance of tax assessable.....\$ 1,348.68

Income tax assessed:

Original 1939 list, account No. 420125.....363.01

Deficiency of income tax.....\$ 985.67

19 UNITED STATES BOARD OF TAX APPEALS.
• • (Caption—106868) • •

Filed
May 29,
1941.

ANSWER TO PETITION.

(Filed May 29, 1941.)

Comes now the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled cause, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar years 1935, 1936, 1937 and 1938, and excess-profits taxes for the years 1935 and 1938. Denies all other allegations contained in paragraph 3 of the petition.

4 (a) to (h) inclusive. Denies each and every allegation of error contained in subparagraphs (a) to (h) inclusive of paragraph 4 of the petition.

5 (a). Denies the allegations contained in subparagraph (a) of paragraph 5 of the petition, except it is admitted that the Claridge Building Corporation, an Illinois Corporation, was the owner of a brick building and lots in 1924 in Chicago, Illinois.

20 5 (b), (c) and (d). Admits the allegations contained in subparagraphs (b), (c) and (d) of paragraph 5 of the petition.

5 (e). Denies the allegations contained in subparagraph (e) of paragraph 5 of the petition except it is admitted that a plan of reorganization in such case was submitted in 1934.

5 (f). Denies the allegations contained in subparagraph (f) of paragraph 5 of the petition except it is admitted that said plan of reorganization as modified was approved and confirmed by the court by final decree entered in said case in 1935; that petitioner was organized under the laws of the State of Illinois; that the capital stock consisted of 3,080 common shares without par value; and that title to the premises mentioned was conveyed to petitioner on August 1, 1935.

5 (g). Admits the allegations contained in subparagraph (g) of paragraph 5 of the petition.

Statement of Evidence.

5 (h). Denies the allegations contained in subparagraph (h) of paragraph 5 of the petition.

5 (i). Admits the allegations contained in subparagraph (i) of paragraph 5 of the petition.

5 (j). Denies the allegations contained in subparagraph (j) of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

21 Wherefore, it is prayed that the Board redetermine the petitioner's liability herein to be the amount determined by the Commissioner, viz.: income tax for the taxable years ending December 31, 1935, 1936, 1937 and 1938, \$3,289.74; excess profits tax for the taxable years ending December 31, 1935 and 1938, \$67.85.

(Signed) J. P. Wenchel,

DAT

J. P. Wenchel,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

F. R. Shearer,

Division Counsel.

David Altman,

Special Attorney.

Bureau of Internal Revenue.

BEFORE THE TAX COURT OF THE UNITED STATES.

(Caption—106868)

STATEMENT OF EVIDENCE IN NARRATIVE FORM.

(Filed Apr. 10, 1943 Apr. 16, 1943.)

The above entitled cause came on for hearing at 1212 Lake Shore Drive, Chicago, Illinois, before the Honorable Clarence V. Oppen, member of the Tax Court of the United States, on February 25, 1942, at 11:30 o'clock A. M., and Walter Hamilton, 29 South LaSalle Street, Chicago, Illinois, appeared on behalf of the Petitioner, and David Altman and George E. Gibson appeared for the Commissioner of Internal Revenue, respondent.

Thereupon the following proceedings were had, and the parties by their attorneys submitted the following evidence:

*Mr. Hamilton: We claim there was a reorganization within the meaning of Section 112 (g) (B) of the 1934 act, in that there was acquisition by one corporation in exchange solely for all or part of its voting stock all the property of another corporation, and that therefore they were entitled to use for depreciation in their income tax, the cost price of the building, which was something over \$424,000, as depreciated.

The Government claims that they were not entitled to that basis. They say it was not a reorganization within the meaning of the act, or they have some other theory, I believe, about the Chandler Act, that the basis should be the fair cash value as of the date of transfer which was August 1, 1935. That is the main basis of the dispute here.

Mr. Altman: It is stipulated that the Petitioner did not acquire the property until August, 1935, but took depreciation for the whole year 1935, when it was entitled to depreciation for only a five month period.

23. Mr. Altman: Our first defense is that the reorganization which transpired in 1935 does not meet the requirements of the Act to qualify as a non-taxable reorganization. Our second is, even if the Board should determine that this reorganization met the statutory requirement in Section 112(g)(1)(B), the correct basis for depreciation under the statute is market value at the date of acquisition, for this reason. As your Honor knows, Section 270 of the Chandler Act provided that whenever a corporation has been reorganized under the provisions of the Bankruptcy Act and in the process of that reorganization its debts are scaled down or cancelled, then the basis of the property in the hands of the old company, if that is the resulting company, or a new one, if a new one is formed, the old basis would be reduced by the amount of the cancelled debt. That section of the Bankruptcy Act was amended in 1939 or 1940 to provide that in no event should the basis arrived at by subtracting the cancelled debts be below market value. So we think market value is the correct basis, either under the theory of a taxable reorganization or under the theory of a non-taxable reorganization, with a cancellation of

the bonded indebtedness which is what the evidence will show.

Mr. Hamilton: I don't think that Chandler Act has anything to do with this case. The Chandler Act as finally amended was back in 1940. You are claiming back to 1935. We claim, in fact offer to show any such change in the law to make it retroactive back for five years is against the Fifth Amendment to the Constitution, as arbitrary and discriminatory and almost fraudulent, and we claim this Section 270 of the Chandler Act is not stated to be retroactive, it has no application in this case, but only to cases that follow in 1940.

Whereupon CHARLES F. HENRY, in witness on behalf of the Petitioner, was duly sworn and testified as follows:

My name is Charles F. Henry, my permanent address is Edgewater Beach Hotel. My business is Real estate and building and managing real estate.

Deficiency Notice, dated January 17, 1941 attached to the Petition as Exhibit A was offered and received in evidence as PETITIONER'S EXHIBIT 1. Its contents are set forth in Petitioner's Petition which is a part of this record.

24 Mr. Henry: The building in question is situated at 4501 Malden Street, Chicago, Illinois. The Claridge Apartments Company, the petitioner, owned in 1935, 1936, 1937, and 1938 the lot at that address with the building on it and some furniture. I built the building on behalf of Claridge Building Corporation, it was corporation organized under the laws of Illinois.

I built the building for the corporation. They obtained title to the land of the building before the building was completed. The corporation paid the bills for the building. It was built in 1924. It was started in the spring, about March, I believe.

"Q. And what was the cost, the total cost of the building after its completion?"

"Mr. Altman: I object to that question on the grounds it has not been shown this witness knows cost, and also it is not the best evidence of the cost. The best evidence of the cost would be the bills that were paid or any other

documents evidencing what the corporation paid for the building.

"The Court: This witness has testified he himself built the building. The best evidence of cost is the knowledge of a witness who has knowledge of it. Records are merely evidence of a recording that was made at the time of something that is a fact. In the absence of any records, if this witness knows, I will let him answer. Objection overruled.

"Mr. Altman: Exception.

"Q. (By Mr. Hamilton.) What was the cost?

"The Court: If he knows.

"Q. (By Mr. Hamilton.) Do you know?

"A. I do know.

"Q. What was the cost?

"A. You mean including the general contractor's profit, or without?

"Q. I want the total cost, profit and everything.

"A. It was four hundred twenty-four thousand and I believe six hundred nineteen and some cents.

"Q. 609.19?

"A. Yes, sir.

Mr. Henry: I know this was the cost at that time because I bought all of the materials and saw all the money was paid for the materials, the labor, and so on, and equipment, everything that went into the property. I made a record at the time.

25 The witness was shown a document which was marked Petitioner's Exhibit 2 for identification and examined it.

Mr. Henry: The book was kept in my own handwriting. This is a record showing contractors, laborers, mechanics and so forth who worked on this property; also shows the material and equipment which was purchased or who purchased it, gives date of payment to the different contractors, material and equipment people. In the front it is alphabetical and that is a simple ledger.

Then starting on page 1, that is the daily cash book showing money paid to the different people connected with the construction of this property. Each entry was made at the time the money was paid or check was drawn for the different items.

From the book here, the records show the total cost, not including the general contractor's profit, of \$385.

169.15. Then adding 10 percent general contractor's profit makes a total of \$423,686.06. Now, the total cost as has been shown each year in the Federal income tax report was a little more than this. At the time by bookkeeper took this record here and totalled it, there is a few other items that I can find to make up the difference there. I find some here, a couple of sheets here that show items of work done, such as odds and ends. There was shops in the building at the time, and one was rented for a beauty parlor. They put in some extra plumbing and gas fittings and so on. There is quite a little of that work done, a lot of odds and ends to be done in a building of that size.

Now some of those items evidently are not in here. I find on different pages different items of cost were not figured in. So I went over that hurriedly last night and saw it would total the amount that was recorded.

These items were put down, as I said before, at the time they were paid out, dating back to February 5, 1924. This book was in storage. I found it at the Claridge Apartments, 4501 Malden, and last night was the first time I had seen this book since the building was finished. At the time the first income tax report was made, the bookkeeper, with my assistance, made it out and \$424,609.19 was the correct cost of the property, and I was unable to find the bookkeeper's statement how he got this little difference, but checking this over, I believe I can show him where the differences are. That cost price was used in the income tax report for 1925 down to date.

There were never any objections made by the Government in regard to it (this cost).

There are one hundred and six apartments consisting of what we call two and a half and three and a half room apartments. The two and a half room apartment we call a living room with inner door bed and dinette and kitchenette. The kitchenette is almost a full sized kitchen. The three and one half room apartment is the same unit with a bed room in addition to that. Of course, each one had a bath room and large dressing closet, large enough for the people to dress in. I think there are twenty six 3 1/2 room apartments, and the balance would be two and one half room apartments. In the construction of this property it is quite different from other buildings of this type.

The first story was strictly fireproof and the other three

stories brick and frame construction, brick walls around each individual apartment, and also dividing the apartment from the stairway. The probable life of the building, taking in these income tax reports, was thirty three and one-third years. That was found in all those reports. Three percent of depreciation on the cost price was allowed in these reports. There was never any objection to using 3%; therefore we assumed they had allowed that percentage. The accepted the tax shown by our report on that basis.

The Claridge Apartments Company acquired the building in August 1st, 1935, that is the petitioner in this case. There was some furniture also acquired. The petitioner acquired the real estate from the Claridge Building Corporation.

I have been in the real estate business over 20 years. I have had quite a varying experience, building buildings, buying and selling property, managing properties, raising mortgages. I have sold property during this time as owner and broker. I managed the building in question in this case from the time it was built up until about 1932, and then again after it was reorganized in the Federal Court—I am still acting as manager. I first began to act as manager immediately after it was built in 1924. During the period of my management, I had occasion to inspect the building. I inspected it sometime every day. Sometimes once a week, sometimes, once in two weeks. During this period, I went in there to take care of all repairs. During the time of receivership under foreclosure, October 1931 to August 1, 1935, I had occasion to inspect the building.

I am acquainted with the fair cash value of the building on the lot on August 1, 1935.

Q. What was the fair cash value of the building at that time?

Mr. Altman: I object to that your Honor on the ground this man has not been qualified to express any opinion with regard to this particular property at this particular date. He said he has been in the general real estate business and he knows this particular physical structure. That leaves quite a gap between what has been done and what in my opinion should be done to qualify this man to give any opinion as to the fair cash value on a specific date. I object on the ground he has not been properly qualified, if he can be.

"The Court: I will take it for what it is worth. It may not have any probative value. Keeping in mind the failure of more specific qualifications, I will take it for what it is worth. The objection is overruled."

Mr. Henry: Most of my time over this period has been building buildings of this character and this size; generally quite large properties, an eighteen story building, fire proof building. I kept some that I built for myself, if I built for a corporation, they kept them, some were sold and some were traded. I started in the real estate business in 1916. I operated all over Chicago as broker. I sold during that time I was selling as broker in Chicago, probably one hundred buildings. I operated, perhaps more on the north side than other sections of the city. The building in question is located on the north side at 4501 Malden Street. The office of the real estate firm where I first began acting as brokerage salesman was right in that neighborhood was about four or five blocks from that property. In 1916 I was doing more brokerage business. I sold buildings at that time. I continued selling practically all the time, from 1935 on, I have just continued. I consider myself fairly acquainted with real estate values in that neighborhood. I can give you the fair market value of this building at 4501 Malden Street on August 1, 1935.

I have different ways of appraising this property, or any other property. In Cook County we value property according to replacement value. On replacement value I cubed this property on that date.

I cubed this building and I estimate there as 81,345 cubic feet. And this particular building in the way it is constructed, having eight front stairs, several corridors, eleven rear stairs, first story fire-proof, one kitchen and bathroom for an average of each two and three-fourths rooms, the refrigerating system, that refrigerating system was put in the property in 1930, we had refrigerators in the property, but we had not included original cost.

I am giving you the value on August 1, 1935. There was either a rollaway bed or indoor bed for each apartment. There was a refrigerator and gas range for each apartment. Each apartment had a tall china case reaching from the floor to the ceiling. Each bath room had a linen case reaching from the floor to ceiling. Each apartment had two china cases in the dinettes, about five feet high. Each apartment had a full sized mirror in the door.

Each bath room had a vitreous china lavatory and pedestal, and had the best plumbing fixtures of the Chicago Faucet Company, self-losing cocks. There are two large portable Kewanee boilers in this property. One can do the work and is doing the work at the present time.

There are oil burner tank connections and so forth inside of this property. There are six laundries in this property where usually there are two or three in a building of that size. There is an intercommunication telephone system from the office to each apartment which is unusual for a building of this type. There is a large lobby fixed up as a parlor. The size of the lobby is approximately one hundred feet by sixty feet. There is the best terrazzo flooring in this lobby. Then there is a vestibule leading into this property, the size is about twenty by twenty, which also has a terrazzo floor.

Each apartment has a government approved mailbox and push button bells and speaking tubes to the apartments, connecting the apartments to the vestibule.

There is a side walk built on two sides of this property. These eight stair halls and corridors are carpeted. That carpet for stair halls is always included in the cost of the building.

29 This building has a deep court in the front facing Sunnyside. It runs the long way of the lot, which is two hundred feet deep. There are press brick used on the entire outside of this building: Press brick cost forty per thousand. The brick is what we call selected pressed brick, the pressed brick equivalent to being on four sides of this building, on the Sunnyside side, on the Malden Street side, and on the three sides of the court. Usually buildings of this kind, if they have a court, it is in the rear where they can use the ordinary common brick.

Each living room has a bay which consists of three windows. These bays are rather expensive to construct because you must use a certain curve of brick running according to that curve, and inside of this is the same way, the floor, the baseboard and the plaster and the lathing all has to be curved. Apartment buildings of this type usually have one to two windows, one large window, two small windows, and if two windows together they are in one frame. These windows each are in a separate frame. It will cost three times as much as windows in the ordinary apartments, in a building similar to this or this type of building,

Q I would say. Each window must have a separate shade, two separate rods and holders and separate stops. The stops in this building were put in with screws. In most of the buildings of this type they are usually nailed in with ordinary nails.

The electrical fixtures, all side brackets, usually four side brackets to each living room. Buildings of this character usually have one ceiling fixture.

The flooring in this building is the best grade of clear oak that can be purchased, that could be purchased. The window weights were hung with galvanized rustproof chain. Most buildings use ropes which cost perhaps not half as much. Also takes longer to hang with a chain.

In many of the dinettes the best grade of battleship linoleum was used with metal protection strip between the dinette and the living room and in the dinette between the two cabinets, the linoleum also used in the kitchens. There are a couple of apartments where a carpet was put in at the time the building was built as the people required that that wanted to rent the apartment.

There was considerable landscaping done on this property. It has considerable lawns and courts and so on.

What I have given you is what it would cost to build a building in 1935, less depreciation. I am allowing 3 percent depreciation. Forty-five cents a cubic foot on the cubage which I gave makes \$366,055.20 which the building would cost to build new in 1935.

Q. August 1st?

A. August 1, 1935, yes.

I allowed 30 percent depreciation from the time it was built. When it was built it cost \$424,000. I allowed three percent, a year.

If it is for a new building, taking off for a used building. I took off thirty percent, would leave net cost for use of the property, the use of the property to 1935, or replacement cost August 1, 1935, taking off for the usage, or condition of the property as it was August 1, 1935, would make a net cost of the property August, 1935, as used, as it was at that time, \$256,238.64. That is replacement cost. That is one valuation.

The court recessed until 2:00 o'clock of the same day.

When I made this appraisal I used another basis than replacement cost less depreciation. I used a selling basis — what the property would sell for.

Real estate men in selling a piece of property to a prospective purchaser often figure certain factors they use times the rental, the gross rental of the building. On this property here in 1935 I believe the figure was \$43,000 plus, and properties of that kind they sell for six and seven times the rental. That includes the lot. Seven times the rental would be \$301,000.

It was very hard to put any value on the lot at that time because if the lot was vacant the property would not have sold for \$10,000, maybe only \$5,000. I have put a value on the lot of \$15,000 which would be a big price for it. That would make the net value from August 1, 1935, on the building as \$286,000 net, that is with the value of the lot deducted.

Another way some real estate men value properties was so much per room. Of course that is a very difficult way because rooms vary in size, quality of workmanship, materials in those rooms, and the fixtures, where they are constructed and so on. I appraised this building on 31 that basis also. My appraisal there for the property in 1935 as it was, without the lot, was \$347,340. There was something over \$230,000 put in the petition as to value. I had forgotten to add the general contractor's profit in that at that time I think I allowed more than a liberal value on the lot at \$20,000. I don't believe there could be any such value placed upon the lot at that time, because it would be impossible, as I said, to have anywhere near that figure and nobody would build on it in 1935.

The corrected valuation considering the contractor's profit would be \$247,240.

After November, 1937 I looked after the management and maintenance and repairs, of the building. After that date I was president and treasurer, of the petitioner, you were Secretary.

The Clagidge Apartments Company has a record of the amount paid for painting and decorating during the year 1936. We have all the daily records of the decorators. There is a ledger account book. The auditor has those records. I do not know where that ledger is now. I don't know anything about it. You are asking now for the ledger of those accounts for 1936 and 1937. I don't know about 1936, whether a ledger account was kept or not. The management of which I was president and treasurer obtained possession of the books of the company and the

property in 1937. - I don't remember receiving a ledger book then.

I have searched the Claridge Apartments, the premises there, my office, and I asked you if you knew where it was, and asked you to make a search for it, and asked the auditor if he had it, also asked you if you would see the Securities Service Company that was supposed to have kept books to see if they had it. I understand you said you couldn't find it. I have been unable to find it. I have made an attempt to ascertain the correctness or incorrectness of the claim in the 1937 income tax return, that is, the claim for painting and decorating bills, \$4,789.41, and repair bills \$1,819.37. I found it in actual bills, and I gave those to you. I know whether the item of \$4,789.41 put in the tax return for 1937 for painting was a correct figure. It is the correct figure. The figure of \$1,819.37 put in for repair bills in income tax return for 1937 is correct.

32 Cost Book of the Property, marked PLAINTIFF'S EXHIBIT NO. 3 for identification offered in evidence.

Mr. Altman requested the privilege of cross examination before Plaintiff's Exhibit No. 2 received in evidence.

Cross-Examination by Mr. Altman.

I purchased this book on behalf of the Claridge Building Corporation, that is the old company, the predecessor of the taxpayer. At the time I purchased the book, we did not have a bookkeeper. The corporation was just organized, just incorporated at that time, so I bought the books, kept the books. No, I had a bookkeeper at that time. The bookkeeper checked the items in the book.

We checked back when the checks were returned from the bank. He would take each check and see that that check had been properly entered. He would check every one that came in. He did not make any entries in this book, except there are a few figures he made. The pencil notation here is his figure. It is a footing. I think the entries were all made by me alone. Here is an item that was made by him. It was interest on some money borrowed for this building by the corporation. These two items here are made by the bookkeeper. They are for Morgan Sash and Door on account, \$3,500, May 1st; June 5th, Morgan Sash and Door, on account, \$6,500. There

is a notation of items entered down here. Those are made by the bookkeeper.

"I did not let the bookkeeper make all the entries in that book because when a contractor would come in for money he would bring in a waiver of lien and his work would have to be checked to see what he had done. Sometimes a contract in many instances they would ask for more money than they were entitled to. It took a man of experience and knowledge to know how much work had been done and what the value of that work was. This bookkeeper, I don't think any bookkeeper is able to do that, so I would do that. I would check over the waiver and at the same time we would agree how much money he was entitled to and I would draw the check and give it to him. Instead of calling the bookkeeper to make the entry, while I was doing it, I would make the entry myself. I would draw the check to the contractor who came in. One contractor got one check at a time.

"Q. Didn't you get part of the checks under this custom this building was operated under? In other words, didn't you have an arrangement with these different contractors whereby they contracted for one price but actually got a lesser amount and you got the difference because of the fact you were in control of the job? Isn't that a fact?

"A. No, sir, it is not a fact. In other words, if I grafted on this property?

"Q. I didn't say graft.

"A. Well, it is the same thing. Furthermore, you can check each and every one of those contracts to see if they received the amount of money shown in that book. I will be glad to have you do that to your own satisfaction."

As to whether this book contained amounts paid after the completion of the building—completion of the construction of the building. If you call it completion of the property, no. Those items were all during completion. In other words, the brick work might have been up, the ceiling might have been on, might have put some additional work in one of the apartments. I would consider that all part of the construction of the building, a part of the cost of the building. As soon as the work on that particular job was finished and one contractor brought in the waiver he was given his check.

I started this building—the first payment was made, as

you will see, on Page 1, in February. I believe that was for the plans. When you draw the plans you can say we started the building. The actual building was not started until we began to excavate. Some say you start the building when you draw the plans because that is part of the cost of a building. We began excavating in the spring of 1924. We completed the building in 1924, approximately in the fall. Some apartments were ready for occupancy there in September. The date of the last payment made on this building was on January 28, 1925. It is \$3,800 to C. J. McGurn, in full. That was for plastering and lathing.

I do not know whether the landscaping is included, without looking at the book, because the landscaping might have been done in the spring of 1925, the year after the building was started. If it was at that time, it might have been put in with some expenses instead of cost. It looks as though that is the way it was done. I don't see it in the cost of the building where it should be put.

We have an alphabetical list in the beginning. Landscaping would be listed under "L". It should be put in and added to the cost of the building that I have put in there. So I shall have to figure out to see what that is and add that to the cost of the building.

34 Since the entries were made in the book in 1924 and 1925, as I testified before, it has been up there in storage at the Claridge. It was in the storage room there. It had been kept in the storage room. I don't believe Mrs. Case has ever seen the book. At least I don't know whether she would know what it was.

It was kept in a storage room with other papers and things. A lot of things were kept in storage. I looked quite a while before I found it, in fact, I thought it was lost. Mr. Hamilton asked me for the book and I looked for it and I made another search, and this is the first time I have seen this book from the time this book was purchased and those entries were made in it at the time the building was built.

The book wasn't turned over to the new officers and directors that got into the corporation after I got out.

I don't think I have any of the vouchers or cancelled checks which would substantiate the entries in this book. I think they probably are all thrown out by this time.

I did not make the footings which add up to the figure at the end of page 11, the bookkeeper totaled them.

I was general contractor for the Claridge Building Company for the construction of this building. All expenses in

curred as contractor in constructing the building are entered in this book. It is not my personal book. I was keeping this book for the corporation. This book was a corporation book. It is all one book, not two sets of books. I had no books to keep for myself personally. Everything I did, I did for the corporation. It don't take any book to put down ten percent profit. This is the set of books we had right here for the cost of construction of that building. We kept no book other than that. I kept a record book as general contractor. That is the book I have in my hand. It is marked for identification Petitioner's Exhibit No. 2.

I was an officer of Claridge Building Company in 1924. I was president or secretary, I am not sure, one or the other. I did not own all of the stock. I just don't recall how much I owned. That was 16 year ago, or seventeen years ago. I haven't checked back there exactly how much stock I had. I am not sure how much was issued. I held a majority of the stock. I am not positive how many I held. I haven't seen any records since seventeen years. I haven't even thought about it. This is the first time the question has been asked me.

The corporation hired me as general contractor, the officers and directors of the corporation.

"Mr. Hamilton: I think that is going far afield to identify a book.

"The Court: I think so myself.

"Mr. Hamilton: I will object to any further cross-examination.

"The Court: I don't see any reason why this witness can't answer the question.

"Mr. Hamilton: He can answer what his knowledge is.

"Mr. Altman: I think it will become apparent increasingly as we go along what is behind this.

"Mr. Hamilton: There is nothing behind it.

"A. (By the Witness.) To the best of my knowledge I and my brother, Howard Henry, and I think Mrs. Case. I think we were."

Mrs. Case is my sister. I think we were. I will have to check to make sure. I am just giving my best recollection that we were officers of that corporation.

It is not a fact that I controlled the corporation. Any two directors were controlling.

Mr. Altman: I will object to the introduction of that book in evidence on the ground it is not the official record.

not been shown to have been the official record of the corporation, and there is nothing in the book to indicate to whom it belonged. It is without a caption, without an address or anything else that would show it related even to the building we are talking about. The word "Claridge" is penciled on the front, so I am not satisfied this was not the personal book of this witness rather than of the corporation and for that reason I think it is incompetent as evidence. Furthermore, it is not the best evidence of the disbursements made therein.

Mr. Hamilton: His own handwriting, and kept at the time of the entry and kept all these years. If that is not the best evidence, I don't know what evidence is.

36 The Court: Tell me what difference does it make.

Mr. Altman, whether this book was kept by the corporation or by this individual if it shows the actual expenses paid for the building. Mr. Hamilton may have to connect it up by showing the corporation by Mr. Henry paid what was paid out of this book, but if it can be connected up to that extent certainly this will be the best possible evidence of what the building cost.

Mr. Altman: Certainly that tie-up has not been made. I object on the ground it is not material or relevant until that tie-up has been made.

Mr. Hamilton: I think I have already made the tie up. I asked who made out the checks for the corporation, paid the checks to the various workmen.

"Q. (By Mr. Hamilton.) What is the fact about that?

"A. The corporation paid out the money, yes, sir."

Mr. Hamilton: Certainly a \$340,000 loan the company would not allow anybody else to pay out except them.

Mr. Henry: I signed these checks, for the corporation by me; Claridge Building Company by Charles F. Henry. They authorized me to sign them.

"Q. Who authorized you?

"A. The other directors and S. W. Straus who made the \$340,000 loan had to approve all these payments and check also before they went through for payment. That is something that would not appear in any way at all on this book.

"Q. The question is whether you are prepared to testify that the payments that are set forth in here were payments made by you on behalf of the corporation with the authorization and approval of the corporation's officers and directors, which I understood you to say a few minutes ago was not yours, that you did not control the corporation?

"A. That is right.

"Q. I understand you to say then these payments that are recorded in here were actually made by you out of corporation funds and on behalf of the corporation by the corporation's checks which you signed as one of its officers?

"A. Yes.

"Q. That applies to every expense that is set forth in this book, is that correct?

"A. Yes, sir. A few of those entries were made by the bookkeeper. The most were made by me.

"Q. I am not asking you at the moment who made the entries. I am asking particularly with respect to all the figures that are included, whether what you have just said applies to all of them?

"A. Yes, sir, it does.

37 "The Court: Objection overruled. It will be received in evidence.

"Mr. Altman: Exception, your Honor."

Said book was received in evidence and is so bulky by stipulation the original of it will be sent to the Circuit Court of Appeals, in lieu of a copy thereof.

Direct Examination (Resumed).

Tenants went into the building before the entire building was completed. The first apartments were occupied October 1, 1925.

I employed union labor on the building. The cost of union labor in 1924 and on August 1, 1925 was about the same. There was some difference between the cost of materials used in this building in 1924 from the cost of materials that would have to be used to replace it on August 1, 1925. Some of them were lower in 1925. Brick were lower and lumber was lower, about 10% lower for lumber. The millwork was about the same.

Reorganization plan, was marked PETITIONER'S EXHIBIT 3, and was offered and received in evidence, and is attached hereto as exhibit.

"Q. (By Mr. Hamilton.) I show you this document marked Petitioner's Exhibit 3 and ask you to examine that. Do you know what that is?"

"It is a plan of reorganization of the Claridge Building Corporation, it is a plan that was adopted except as modified by the decree of court in this reorganization in question in this case.

It is stipulated in the record that non-depositing bond holders received proper notice of this plan before it was adopted by this Court.

Notice of Adoption and Filing of Plan of Reorganization, dated December 14, 1934, was marked Petitioner's Exhibit 4 for identification.

I know that this Petitioner's Exhibit 4 for identification, being Notice of Claridge Apartments Bondholders Committee's Plan to their depositing stockholders was sent out to depositing stockholders about the date it bears, prior to its admission to the Court.

PETITIONER'S EXHIBIT 4 offered and received in evidence, and copy of same is hereto attached.

It is stipulated that the Claridge Building Corporation bond holders committee were vested with full power under the deposit agreement as if they were absolute holders of the bonds, and had the right to negotiate and perfect this reorganization agreement.

38. Document marked Plaintiff's Exhibit 5 for Identification dated May 14, 1933, purporting to be an order of Court approving plan of reorganization and allowing certain claims, which was identified by the witness, and he testified that it was actually entered by the Court while he was president. The same was offered and received in evidence as PETITIONER'S EXHIBIT NO. 5, and copy of it is attached hereto.

Petitioner's Exhibit No. 6 for identification, being an Order signed July 22, 1935 in the 77-B proceeding which involved building corporation, was offered and received in evidence as PETITIONER'S EXHIBIT NO. 6 and attached hereto.

Mr. Altman: I move to strike out exhibit just admitted on the ground it is not a complete copy inasmuch as the documents referred to in the instruments have not been offered in evidence and the document is unintelligible without the exhibits.

The Court: It seems to be a complete order. Motion denied.

Document marked PETITIONER'S EXHIBIT 7 for identification, being copy of Petition that was filed in 77-B proceedings in this Claridge Building Corporation case, was identified by the Witness. It was offered in evidence and is attached hereto.

PETITIONER'S EXHIBIT 8 for identification, being an

order entered in the 77-B proceedings of the Claridge Building Corporation was identified by the witness.

It is an order authorizing the new corporation to borrow \$18,500 with which to pay back taxes due and if necessary, some of the reorganization expense.

It was offered and received in evidence without objections, and is attached hereto.

Petitioner's Exhibit 9 for identification, being a verified report by the Bondholders Protective Committee and Minnie H. Case and Claridge Building Corporation, showing they had carried out all the things required to be done by the decree of the court, approving the plan, was identified by the Witness, was offered and received in evidence as **PETITIONER'S EXHIBIT NO. 9.**

The Petitioner offered in evidence **PETITIONER'S EXHIBIT 10**, being an order of Court in case No. 56230 in the matter of Claridge Building Corporation, which was entered as part of that case August 13, 1935 by Judge Sullivan in the District Court of the United States, Northern District of Illinois, Eastern Division, in which that Court entered a finding that the bondholders protective committee and Minnie H. Case and Claridge Building Corporation have done and performed all the things and acts required to be done and performed and executed and delivered by them in the execution and confirmation of the plan of reorganization as amended and decrees and orders entered herein. It was received in evidence, and attached hereto.

PLAINTIFF'S EXHIBIT 11, being a Trust agreement of Claridge Apartments Company, dated July 1, 1935, the trustees being George W. Rossetter, Jay Mc Cord and Paul Steinbrecher, the agreement resulting from the reorganization in the case of Claridge Building Corporation involved in this case and approved by the Court under one of the orders offered in evidence in this case and approved by the Court, and one of the orders under which they acted in this reorganization. It was received in evidence without any objection. The document is bulky and original will be certified to the Circuit Court of Appeals.

39 Carbon copy of letter dated February 14, 1942, signed by Walter Hamilton, which purports to give the list of stockholders to whom stock was issued, giving all the names of the bondholders who received stock direct and also the three trustees who received stock direct, and the equity holders of the old corporation receiving stock direct.

The same was admitted in evidence subject to checking against the books, as PETITIONER'S EXHIBIT 12.

Mr. Hamilton: I examined the records in Cook County in the Court House here in Chicago and I found on the 14th of April, 1932, the Claridge Building Corporation made a conveyance of the property involved in this case, 4501 Malden Street, to Minnie H. Case. It is stipulated that such conveyance is on file.

Mr. Henry: I know about this deal between the Claridge Corporation and Minnie H. Case. When the Trustee, Melvin L. Straus, was operating the Claridge Apartment Building Mrs. Case's attorney advised her, and he also advised the officers of the Claridge Building Corporation to let Mrs. Case hold title to this property. He thought he could effect—it would be better for the reorganization of the property later on. I know that Mrs. Case paid nothing whatsoever for the property. The understanding was she was to hold title for them until they ask to have it deeded back or to whoever they wanted to deed it to.

Examination by Mr. Altman.

Mr. Henry: The understanding between Mrs. Case and the Corporation was an oral understanding.

Concluding Examination by Mr. Hamilton.

Mr. Henry: I am familiar with all these documents which we have introduced in evidence here. I know whether or not all the documents therein contained are true or not as to the facts they set forth and whether or not all the orders mentioned in there were carried out or not in this reorganization. They were all true and they were all carried out.

The time Claridge Building Corporation made this transfer, it was insolvent. It did not do business after this transfer.

The other bond holders who did not get stock, obtained trust certificates under this reorganization. They got one trust certificate for each \$100. bond, par value.

Minnie H. Case owned 98 shares of the Claridge Building Corporation before this reorganization. There were 100 issued altogether. Mrs. Case got title to these 98 shares because I owed her some money, so I gave her the

stock for the money. That was before the reorganization. There was no written agreement in regard to it.

The Claridge Building Corporation owned just prior to the transfer on August 1, 1935, the lot at 4501 Malden Street. I was president of the Claridge Building Corporation when it was organized. I don't know exactly how long I remained president. I would say probably six or seven years. I kept in touch with this property up to the first of August, 1935. I know what property it owned on August 1, 1935. It was the Claridge Building and the ground at 4501 Malden Street. It owned also part of the furniture that was put in there by the Trustee and paid out of the rents.

That was all the property it owned at that time out side of what cash it had on hand. This was all the property that was transferred to the Claridge Apartment Company. They got nothing else.

The following are the names and the number of buildings I have built as a builder in Chicago:

Thirty-Seven apartments, 3, 4, and 5 rooms on Cornelia Ave., near Brompton Place, on the North Side.

Ninety-Six fireproof apartments at the corner of Marshfield and Cornelia Avenue, on the North Side.

Eighty-Seven apartments, one to five rooms, at the north west corner of Wilson and Winchester Avenues, on the North Side.

One Hundred and Fifty-One apartments, fireproof, eighteen story building, 201 East Delaware Place, on the north side.

Twenty-four apartments at 70th and Merrill Avenue, four and five rooms, on the south side.

One Hundred Eighteen apartments at Drexel near 44th Street, on the South side.

Forty-six apartments on the southwest corner of Drexel and 44th on the South side.

Sixteen apartments at the corner of Addison and Jansean, on the North Side.

41 Twenty-seven apartments at 630-28 Gary Place and four apartments on Rokeby Street near Waveland, on the North side.

Forty-two apartments on Cambridge and Diversey.

One Hundred and Six apartments, 4501 Malden Street, the building in question.

*Statement of Evidence.**Cross-Examination by Mr. Altman.*

I originally owned the lot at which the building at 4501 Malden Street was erected. I bought part of it for cash and part for trade. I sold it to the Claridge Building Corporation for \$100,000, which included my ten percent profit of \$38,500. The deal wherewith the land was conveyed was \$38,500, 10% commission, and \$61,500 making a total of \$100,000. I owned all the stock except one or two qualifying shares. I told that stock up until 1932. I think I held it from 1924 to 1932, somewhere along that year. I am not sure as to the dates. I had it for several years. I held it.

I sold it to Mrs. Case. She paid me cash for it. I owed her the equivalent of \$98,000. She didn't owe me, I owed her.

Mrs. Case did not live in the building before that. I don't know of anything she got payments from the corporation for. She did not manage it from 1924 to 1933. I looked after it at that time. I did not pay her for management of it during that period. I managed it.

In the reorganization plan, they allowed her to manage it and paid her a fee. It was what the bondholders' committee and so on agreed to do, and the lawyers of the corporation. I don't know what their ideas were. They all got together and agreed to let her manage the property and paid her a fee. That was at the time of the reorganization in 1935. Before that she also helped me with it. She always did as long as I have been in business.

Prior to 1934, the Claridge Building Corporation did not pay Mrs. Case anything for services. As to whether she rendered any management services, she assisted once in a while, helped a little. She had some furniture in the place. She received rent for the furniture from the Claridge Building Corporation. They did not pay her a salary. They paid her for the furniture she put in there.

42 She had a contract with the Trustee, the bondholders' committee. I think that was in 1931. I helped her negotiate the contract. I did not suggest that the property be conveyed to Mrs. Case and that she hold title to the property. I think I was an officer of the Claridge Building Corporation in 1931. I think I was still President.

I was an officer of the Claridge Apartments Company that was organized in August 1935 before it was dissolved. I thought you were talking about the Claridge Building Corporation. I think I was an officer of the Claridge

Apartments Company. In 1937, I was President I believe for four years. The minute book shows I was president. This is November 15, 1937 the meeting was held, and at that time I signed here as Director, also president; Walter Hamilton, secretary, Charles F. Henry, Treasurer. I am Charles F. Henry.

I am an officer of the petitioner Corporation today. I think I am president and Treasurer of it now. I am quite sure. My final figure of the market value of this property on August 1, 1935, is \$256,238.64. That is the fair market value of the building without the land on August 1, 1935. The real estate conditions in Chicago in that particular neighborhood where this building is located was poor, there was no building going on. The market for the purchase and sale of this property wasn't very good. It was a very poor market. It was not one of the worst markets we have known in the history of Chicago. 1931 and 1932 were much worse. Buildings were sold in 1935, in fact a fair market for buildings in 1935. Things started getting better in 1933. 1936 was better than 1935. 1937 wasn't much better than 1936 as to real estate. Renting wasn't any better in 1936 or 1937. In other words, in this building here the rents in 1935, 1936, and 1937 I would say were the same.

1937 may have been a little better market for selling than 1936. 1937 showed a definite up turn more for securities and stocks and so on than it did for real estate. You probably couldn't get much more for the building in 1937, but there were probably more buyers I would say. To sell a property of this kind and size is always hard, whether it is a good market, as it is too large. Most people don't want a building of this size.

43 In 1938 and 1939 things did not continue to improve as to real estate. They did not improve for this type of property. I understand we meant by the fair market value of property, the replacement value of this property or what it should sell for for what is there. What it should sell for, yes, the property should sell for; what it would cost to replace it. I mean what it should sell for if I sold it. You have to almost give a piece of property away in order to sell it. It may be worth four times, that sometimes happens, if it was a sale of property under the hammer, if not many buyers for a piece of real estate. To sell a particularly large piece you would have to sell the building at half of what it is actually worth. What a

piece of property sells for is of no significance of the actual value of the property. What a property would and could be sold for depends on the market at that time. I gave one appraisal on the rental basis. Property sold in 1935 six or seven times the rental of the building, on the ground, unfurnished, actually sold for that; for cash, that is cash and the balance between that and the first mortgage. These figures I have given you, about two hundred and fifty-five thousand or sixty thousand, are what the property should sell for. I might sell for that much money, might have sold for that much money in 1935. In my opinion the property would sell, if I had to sell it on August 1, 1925, for that figure I gave you, \$256,000. It would have sold for more if the property had been handled by a real estate man, to some buyer. I think a customer could have been found to buy the building at that price, on August 1, 1935.

In the case of this particular apartment what it should sell for and what it could sell for was the same thing in my opinion. As to the value of real estate during the year 1940 as compared with the year 1935, it wasn't much better. The rents for this kind of property were the same. The selling market in 1940 might have been a shade better; not very much. That is my opinion as an expert on this type of property. Only a shade better than 1935 for this type of property.

For residences in the suburbs, it was much better. This property was only a shade better in 1940 than it was in 1935.

44 The Claridge Apartments Company does not own this property now. They sold it in 1940, July 1st, the government knows it has been sold. The income tax has been filed, made out for this property and paid by somebody else, made out by somebody else.

I was president of the Claridge Apartments Company in July, 1940. It was sold to the Claridge Corporation. I am not an officer of the Claridge Corporation. I was not an officer of the Claridge Corporation at the time of the sale. It was another corporation entirely, nothing to do with this other association, Claridge Apartments Company. The stockholders of Claridge Apartments Company negotiated for the purchase of this property and they, the corporation notified all these stockholders and talked to them, told them they thought that would be a good offer for the property, give them a chance to get out, and so

they accepted the offer. The offer was, as near as I can figure, \$126,200. I believe that was the figure arrived at. That included land, not the furniture. The new company did buy the furniture. That is the Claridge Apartments Company bought the furniture for \$1,400. This \$126,200 included everything, the land, building, and the furniture. There was some litigation instituted to prevent the sale of the building for a smaller amount. There was a lower offer submitted to the old bondholders' committee, Straus, that made the loan, the Straus Securities, and the trustee, Melvin L. Straus, they all thought it should bring more money, and they thought the bondholders should sell, so they recommended the deal, there was a higher offer made, and they recommended this deal to the bondholders, that the bondholders should take it and get out of it. I couldn't sell the property without the consent of sixty-six and two-thirds per cent of the stockholders. There was an offer submitted to the stockholders, some were prepared to go ahead and some were not. There was litigation. I was away at the time the sale was taking place. I wasn't in the city at all. I think I was in California, if I remember right. The lawyers negotiated back and forth. There was a little misunderstanding, I believe, between the lawyers and so on, and there was some misunderstanding. Some lawyer bought a bond in order to make an attorney's fee for himself. He started some sort of a proceeding. As soon as he arranged to get his fee, he withdrew. I don't think I was sued personally. I think probably the corporation was sued. I couldn't individually do anything.

Q. What did you pay for the stock of petitioner corporation when you bought it in 1937 and 1938?

Mr. Hamilton: I object to that, your Honor. That has nothing to do with the value of the property.

The Court: Objection overruled.

The Witness: I didn't buy the stock in 1937 and 1938.

I had no arrangement for the purchase of it by somebody else in 1937 and 1938. I always had stock. You are talking about Claridge Apartments Company, are you not? I always held stock, given stock by the government in the reorganization. I was given eight shares.

As time went on, I bought more stock. I presume I bought some in 1937. I don't think I bought any in 1938. I don't know how many shares I bought in 1937, or how

much I paid per share, I don't remember. I haven't any idea at all.

This stock was offered by brokers different times. When something was offered I could buy for my own price, I would take it. I did not buy enough shares to have control in 1937. I was buying since it was reorganized in 1935. I paid all the prices I could get for it. I think the most I paid was between \$25, \$27 and \$30 per share. There were 3,078 shares outstanding. I was paying around \$25 to \$30. I paid more than that, I paid as high as \$35.00.

I bought some of these certificates of deposit before the new company was formed in 1935. My sister did not buy any that I know of.

RESPONDENT'S EXHIBITS "A", "B", "C", and "D" being Federal Income Tax returns of Petitioner for the years 1935, 1936, 1937 and 1938 inclusive, were marked, offered, and received in evidence.

The record shows there was \$8,000 on hand in the old company when the reorganization took place. The petition shows that they raised \$18,500 by a loan. The two together made \$26,500. With this money, they paid back taxes and attorneys fees and bondholders committee fees and so on. They paid fees to the bondholder's attorneys. If it shows that Osborne got fees, that is correct. Yes, the whole \$26,500 was spent for the bondholders. For the reorganization plan and taxes and Osborne, Klein & McCurren and so on. Part of it went to the attorneys who formerly worked out the plan. The Trustees paid the bondholders. All the money was spent for the bondholders. The bondholders paid this money back to the firm that loaned it.

As to whether the \$26,500 was turned over, was paid, by the new company by its own checks, I am trying to see if they did it or the attorneys did it after the reorganization. I am not sure what was done. I don't remember who signed the checks, but according to these figures, if you want to shorten this, these figures are correct and besides the names of the attorneys and so on are listed who had received this money.

The new company was not to pay all these reorganization expenses. All these items on the sheet here says are to be paid by the Claridge Building Corporation. It says the Claridge Building Corporation right there. They are to be paid by the Claridge Building Corporation, \$2,000

attorneys, and so on. All attorneys to be paid by the company, right in this file. It is a statement of unpaid fees and expenses September 20, 1935, to be paid by Claridge Building Corporation. The Claridge Building Corporation was in existence at that time. The Claridge Building Corporation was still in existence at that time, yes. They had paid their franchise tax, and were in good standing at that time.

There were a few bonds in Claridge Building Corporation that were not turned in. They were not turned in to the bondholder's committee. I think there were a few probably could not be found. I presume a few were not turned in. I don't know if they were cancelled. I never cancelled them. I never did cancel them. Whether the attorneys had power to cancel them or not, I didn't handle that part of it. If the plan says you ask if I knew they were cancelled, I don't know if they were cancelled.

I testified the value of the land in 1935 was \$15,000.

I did make an appraisal of the land at \$20,000 with the government. I said I thought I had valued it at five thousand too high, and it is only worth fifteen.

It is my understanding that all provisions in the Court decree in regard to carrying out the plan were actually carried out.

47 *Redirect Examination by Mr. Hamilton.*

The selling price for the Claridge Apartments Company was \$126,200. There were liabilities assumed by the purchaser in that deal. I think they were around fifteen or twenty thousand, something like that. We figured about twenty thousand. There were these taxes the government claims, we had this lawsuit, that was assumed by the purchaser, and there were a lot of back real estate taxes assumed by the purchasers, unpaid bills, salaries and so forth were assumed by the purchaser. It might have been more than twenty thousand. That ran into a lot of money.

As to the \$26,500 I do not know how it was spent. The taxes were paid. Everything was paid out of that money. Now, I think there is enough money on hand to pay the taxes with. There were \$13,000 for taxes and \$8,000 on hand. The reorganization was \$13,500.

It seems to me there was a mistake in the figure of the

stock, one hundred shares, \$100 a share, in the reorganization of the Claridge Building Corporation. It would be only \$10,000. The original capitalization of the Claridge Building Corporation was \$100,000 eventually reduced to \$20,000.

Recross Examination by Mr. Altman.

There was not \$15,000 cash on hand obtained by the Claridge Corporation from the Claridge Apartments Company in this deal. Refreshing my mind, from this document, there was not that much money on hand from the Claridge Apartment Company. What I am trying to say is if there was that much money in the bank it didn't belong to the Claridge Company. In other words, it was put in there to bring up that amount so the deal could be made. They took over all liabilities and the cash on hand. Whatever it gives here, these figures are naturally correct. The correct figure is \$126,000, for the value of the property, as I gave you before. Here are the liabilities. Instead of the Twenty Thousand figure which I gave, it shows \$22,145.36. The cash on hand was \$15,000. They estimate there would be \$3,200 in rent coming in January 1, 1940, to March 31, 1940. If the new company, The Claridge Corporation, collected it, they delivered it to them, yes. There is also a \$3,000 item which the purchaser was to pay to attorneys of the bondholders and to Sonnenschein, Berkson, Lottmann, Levinson & Morse, attorneys for the plaintiff. It was in addition to the amount paid for the property, it shows right here.

The building was partly fireproof. The first story is fireproof. The rest of it is what is called semi fireproof. The floors above the first floor are what we call wood construction. In fact, we have semi fireproof insulation, the walls all fireproof in each apartment and stair hall walls are also fireproof. I would call the second and third floors semi fireproof.

Petitioner rests.

MILTON J. ISAACS, a witness, called on behalf of the Respondent, testified as follows:

Direct Examination.

My name is Milton J. Isaacs. My business address is 135 South La Salle Street. I am employed by Straus Securities Company. I am appearing in response to a subpoena served upon the Straus Securities Company. During the 1935, I was employed by the Straus Securities Company as a manager of the Trading Department. My duties consisted of buying and selling securities over the counter market. All these securities that were bought and sold, were bought and sold on behalf of Straus Securities Company. These securities included certificates of deposit of defaulted bonds of real estate company in 77-B proceedings. Also stock of real estate companies.

Prior to August 1, 1935, we purchased and sold securities of Claridge Apartment Company—we purchased on behalf of Straus Securities Company certificates of deposit of bondholders who had deposited bonds issued by the Claridge Building Company which was in 77 B reorganization proceedings at that time. Each certificate of deposit covered one bond of a thousand dollar denomination, yes.

Q. At what price did you purchase such certificates of deposit in 1935?

Mr. Hamilton: I want to make objection to this testimony. I can't see any materiality to this at all.

The Court: Objection overruled.

Mr. Hamilton: (Continuing.) What the stock sold for. Exception.

A. We show in January, 1935, certificates of deposit for this company were purchased at \$20, a hundred or a price of \$200 per thousand dollar certificate, and after that the same securities sold on a range from \$190 per thousand to about \$207.50 per thousand.

Q. That means a thousand dollar bond which the depositor deposited with the protective committee and received a certificate of deposit, we paid that amount.

Our next record shows a transaction in December of 1935, at a price of \$190 per thousand dollar certificate of deposit. The stock to my knowledge had no value whatsoever, and it didn't trade in the over the counter market.

During 1937 I purchased, as agent for Mr. Henry, some of the stock of the new company, the Claridge Apartments Company.

Cross-Examination by Mr. Hamilton.

I do not know what connection the Straus Securities had with Straus that wrote this bond issue for \$340,000. I do not know whether they had a list of bondholders that were sold under that \$340,000 issue. I do not know whether they had people who were soliciting these bondholders to sell their certificates of deposit. I do not handle customers. My duties are buying and selling securities to dealers. Mr. Henry is not a dealer to my knowledge. Straus Securities Company sold to him.

People desiring to sell securities call me as well as they would any number of houses that deal in over the counter securities for a market for these securities. I would not answer whether or not that particular sale was in distress. I can't answer whether or not most of the bondholders who sold their securities at that time were in financial distress and sold the securities. I would not know, not dealing with the individual. I can't answer whether they could have been. Unless I knew the circumstances of the individual. I would not know whether it was in distress or not, but in dealing with the general over the counter securities dealers, I don't think they would be in distress. I don't claim to be an expert to say whether a party is in distress, or he is not in distress. I do not know about that.

Q. Isn't it a fact there were so many of those bonds on the market in Chicago, that there was practically no market at all for them and the prices offered were ridiculous, considering their true value?

A. According to the records of our entries the amount of stock or certificates of deposit traded would not indicate a large supply.

We were one of several houses dealing in those securities.

Q. And the bondholders could not get anything for their bonds commensurate with what they were worth at that time?

A. That is not correct.

Q. You mean to tell me the buildings which were back of these bonds were not worth any more than the percentage that you paid for the bonds?

"A. Not being an expert on valuations, I could not answer that."

"I assume S. W. Straus underwrote this \$340,000 bond issue. I can't answer whether or not the Claridge Building at 4501 N. Malden St., was not worth more than \$20 for a \$100 bond, that is, the property was not worth any more than what for a \$100 bond."

"Q. Do you think it was backed by more or less than \$20? Were the assets which are in that property worth more than \$20 for \$100 worth of bonds, were they worth more or less than \$20?"

"A. I am not at liberty to say. I do not know the values of real estate."

"I am an expert only in the purchase and sale of securities."

"Mr. Altman: Just a minute. I want to make the point, this examination is not proper examination. It does not deal with anything within the scope of the direct examination. I subpoenaed this man to testify to some securities he traded. He is being asked what the building was worth."

"Mr. Hamilton: The only purpose is, he has asked this witness as to the value, what this stock was worth."

"The Court: I believe you are correct about that. I am going to let you go on with the examination. I am going to point out to you as far as this witness is concerned it does not seem as though there is any possibility of getting any answers to your question. I am not sustaining any objection on the ground of materiality, but I hope you are not going any further into that than enough to convince yourself you can't get an answer out of this witness."

"(By the Witness.) The only thing I can say is that the market on those days as is reflected by the purchases and sales were the prices in which we dealt in those securities. As to their value, I am not here to testify whether they were worth twenty cents or worth fifty cents. I do not know about that. There wasn't any exchange on which these bonds were offered. No exchange like a stock exchange where these bonds were offered. They were over the counter securities, sold to individual brokers."

"We would not buy them and sell them on the same basis. I am sure we weren't selling at the same price we bought them. The purchaser was the one that paid this commission to us, not the seller. I am not at liberty to say how much the commission was because I don't know. I do not

know the sale I mentioned of \$20. for the \$100 bond eventually cost the purchaser \$25. I have no idea about that.

Redirect Examination by Mr. Altman.

There were six transactions in 1935.

JOHN C. BOWERS, a witness on behalf of Respondent testified as follows under direct examination:

My name is John C. Bowers. My address is 5000 Marine Drive, Chicago. I have resided there for six years. That is in the general neighborhood of 4501 Malden Street. My place of business is at 4628 Broadway. That is a few blocks from 4501 Malden Street. I am familiar with the property known as the Claridge Building at 4501 Malden Street. I have been within a radius of a block and half of that section for twenty-seven years in business. I am in the real estate business and property management and appraisal of property. I am also a broker. I am a licensed broker, and have been so licensed since I have been in business. At the present time I am treasurer and a member of the executive committee of the National Association of Real Estate Board. During 1935 I was president of the Chicago Real Estate Board.

I have made appraisals for various agencies of the government. I would say practically all of the appraisals that were made for the Home Owners Loan Corporation would bear my signature, as president of the Chicago Real Estate Board. The Chicago Board made these appraisals and it was necessary the president of the Board sign them and pass upon them. I am in business for myself at that address. It is a real estate firm.

I have acted as a broker in a number of transactions and I have purchased or traded in properties myself, dealt in them, during the last ten years in that neighborhood; the general neighborhood of the subject property. I remember when the building at 4501 Malden Street was put up. I lived just a short distance from there, and I had to pass it when it was being built. I would say it was about around February, 1924. I watched the progress of this building during the course of its construction somewhat.

My general knowledge of this building and other build-

ings of the north side, I have made it my business to keep in touch with real estate, the sale of it, the prices owners were asking for properties, the price property sold for.

I think I have a rather thorough knowledge of the sale of real estate. This building has never been listed in our office for sale. I mentioned before I was in the property during the time it was under construction and have made an inspection of it recently. The building is three-story and basement court type apartment building, has entrance or lobby which is large and stairways radiate from the lobby up to the various landings. The floor of the building is terrazzo type floor, terrazzo finish, and six stairways lead up to the sets of apartments, groups of apartments, off this lobby. Each one of those six stairways have twelve apartments and two more stairways have fifteen.

The building, I would consider it to be, well, it would be classified as concrete slab construction, the first floor and ordinary wood joist and plaster construction with brick walls separating the various apartments on the second and third floors, the top floors.

There were some stores in the building. I don't recall just now whether they were in there at the time the building was built or not, but they were in there shortly afterwards, and I think were in the property in 1935, but I believe were in violation of a city ordinance and afterwards were closed.

It was a violation of a building ordinance not allowing stores to be built in that section of Chicago. The terrazzo floor in the lobby has cracked in several places which denotes settling. The same is true in some of the corridors leading up to the stairway cases also. The terrazzo is badly cracked. It shows the lack of proper footings or proper foundations under the floor.

In my experience in this business, I have familiarized myself with the details of construction so that I can tell a building that is poorly constructed from one that is moderately well constructed, and one that is very well constructed. That type of information is necessary to the prosecution of my business. One must have a thorough knowledge of the different types of construction. Based on that knowledge, in my opinion, I would say that the construction of this building is average.

I am familiar with real estate conditions in 1935, and

the market for buying and selling of apartment buildings of this type. I am familiar with the market for apartment buildings in this neighborhood, 4501 Malden Street, also, for the year 1940.

The prices obtainable in 1940 were considerably above those of 1935. The market was much more active in 1940. There were more buyers. It was much easier to - it has been much easier to obtain mortgage financing in 1940 than it was in 1935. As a matter of fact, in 1935 the market was quite dull, inactive. Some residential properties were selling, some small two-apartment and three apartment buildings were selling, and a few other scattered properties, but the market would be considered dull insofar as income from the properties was concerned. It was abnormally dull compared with 1937 and 1940. There was very little similar property sold in that neighborhood in 1935. There was a sale of a parcel of property at 4500 North Malden Street. That is directly across the street from this building. It is a three story building, English basement type, similar to the building under discussion here, on a corner lot, 150 by 150, containing 33 one-room apartments, 24 two room apartments, 15 three room apartments, and 3 four room, and 3 three room apartments in the basement. That was sold in December of 1935. It sold for about \$107,000. That was for the land and building, and furnishings. This building is completely furnished. They were all furnished apartments. I would say this building was similar to the building at 4501 Malden Street. The building at 4500 was a building of a comparable construction. The room sizes are larger here in this building than in the building in question. There is more privacy in this building due to the fact there are separate entranceways leading up to apartments. You don't have to go through a central corridor or central lobby. I would say that the physical construction was about equal to the Claridge Building. It was not inferior. I would say the Claridge Building would sell for more money than this property in August 1935. I would say the Claridge would average for land and building, \$156,000, or \$157,000. I base this value on my general knowledge, not upon this sale.

I would say it would have been quite difficult to obtain a buyer for \$156,000 for the Claridge Building for August 1935. You would have had to put forth considerable ef-

fort to produce a buyer, to buy at that price at that time.

54 It is the general practice for an appraiser to consider the value of a piece of property from its economic approach. That means the ability of the building to produce a reasonable return. Sales are not always made necessarily on that one basis. They are sometimes made if a person has particular use for a property, they may pay more for it, but in income-producing property such as this there is a very definite rule established as to the approach.

It is a rule as to the amount of money that a building can produce, the gross income, the desirability of the apartments, the question as to whether the neighborhood is on a declining basis or whether it is remaining static or whether rising. It would include the amount of rent you would estimate that your building could bring in. The type of construction would come into the analysis of it. And so doing that, you arrive at what might be considered a stabilized income and then this stabilized net income is computed and worked out where it produces a fair return on the investment and sets up sufficient money to replace the improvement at the end of its life.

I would say the neighborhood is on the decline. There are many factors that have come into the section, such as six apartment buildings have been converted in to rooming houses. There have been a number of those instances in the immediate vicinity. The general character of the people occupying apartments in that section is more or less of the transient type, less desirable, not as permanent, not families.

There is a colored settlement, a number of negro families that have been occupying ten or fifteen buildings, two-story buildings about six or seven blocks from the property. It has an adverse effect on the market value of the real estate. It is a detrimental influence.

We have not considered in this building any income that might be derived from furnishings or the use of furniture in connection with it. We are considering it as an unfurnished apartment building. We believe that is the original intention and it is presumed when the furniture is put into a building after it has been built for a definite purpose it is because the apartments are not rentable as unfurnished apartments. We have disregarded entirely the use

of furnishings in the building outside of the little furniture the lobby would take. We find a stabilized net income as of 1935 in that building of \$16,000 a year.

That is the amount of money left after you have paid all of your operating expenses and salary, your coal, and taxes, all the maintenance expenses, insurance. This is before depreciation.

Then we apply the Babcock system, which is an annuity system. We take the net income, multiply it by a factor which we arrive at by the number of years we believe will be the remaining life of the building. In this case we considered twenty-nine years would be the remaining life. We used an eight per cent factor. Eight percent produces a factor of 9.5458 and multiplying that gives a sum of \$152,732, and to that we add the reversionary value of the land which we consider to have a value of \$26,250, applying the six per cent rate to that, which gives \$4,854, or a total of \$157,577.

Using that approach to arrive at a value one would come to a total value of \$157,577, land and building.

I am considering this cash sale, the cash market value of the property in 1935. You would find it difficult to secure a purchaser for a building of this kind for four times its annual rental unfurnished, gross rental. The value of the land and building on August 1, 1935, talking about the fair market value, what the building could be expected to be sold for if a purchaser could have been found at that date, I would say is \$157,000. I would allocate \$26,250 for the land, the rest of the building. If the property had been sold at that price, I would say that would be a good price as of 1935.

Cross-Examination by Mr. Hamilton.

The Home Owners Loan Corporation dealt only with single family dwellings up to four apartment buildings. It is not much different to find the fair cash value of these buildings than to find a fair cash value of a building of the size of the one in question. It is more or less the same approach. It is a fact that these small buildings can not, as a rule, be used for commercial purposes, but only mostly for homes. However, the corporation made loans on buildings that contained commercial space on the first floor.

56 The building that was sold in December, 1935 was a 69 apartment building. There were thirty-three one room apartments, twenty-four two room apartments, fifteen three, three four room apartments, and three three room apartments in the basement. The lot was 150 by 150. It had individual lobbies. There were no furnished lobbies. They are large vestibules, much larger than the average, but they had the mailboxes in the lobby and in order to get through into the inner part of the building, you had to ring the bell and the door was opened by a buzzer. I do not believe they had any inter-communicating telephone system. I am not sure how many boilers were in the building. I would not be able to answer that definitely. I am not sure what kind of a boiler they had. It was a steam boiler, low pressure boiler. It had a steam heating system. I do not recall what system it had for heating the water for the use of the tenants. It had individual meters for electricity. Each tenant paid for his own light. The building pays the gas as I recall in this case. I would say that the first floor was ten feet above the ground.

I don't believe the Claridge Building has much greater height in its basement than that sir. I think they would be comparable in that height. The distance from the vestibule to the floor of the building across the street from the Claridge I would say is about nine feet. It is not a fact that it is just seven feet in height. I don't just recall the exact height. You will find it pretty close to 9 feet. The lobby is grade level. I don't know how many steps you have to take to get to the basement floor of the Claridge from the ground level, but I would say it was about two feet below grade.

I don't believe there are any cabinets in the bath room of the building across the street from the Claridge. There are very nice china cabinets in the dining room. There is linoleum in the kitchen, but not in the dining room. The fixtures in the bath room in the building across the street from the Claridge are rolled rim porcelain tubs, pedestal lavatories, low tank toilet combinations with Sloan valves and metal type medicine cabinet. I don't think enameled iron was used, but I am not so sure. I think some are enameled iron fixtures, and some are not. It wouldn't make much difference, however, in the ability of the 57 building to earn. It is up there as an economic unit.

As to whether you have a better chance of getting

better rents for a building if you have a nice lobby and a manager taking the complaints of the tenants like in the Claridge Building, from my experience, I don't believe it makes much difference. After all, you have a manager in the lobby you have to pay their salaries.

Part of the building of the Claridge was partly furnished in 1935. I put my appraisal on the proposition of no furnishings. If it were on the basis of furnished apartments, it would make it a little higher, the difference in the cost of the furniture. However, in the management of buildings of this kind, it is generally conceded good business to get rid of the furniture as rapidly as you can because it is unprofitable.

The reason apartments are furnished is to rent them. I won't say you get a higher per cent of occupancy in furnished apartments. To my knowledge, we have extensive management all over the north side, when we find apartments are not renting, we furnish them and then as soon as the market firms up, dispose of the furniture and rent them unfurnished.

The gross rentals of the Claridge Building in 1935 would not affect my value, because some of that money may have come from the furnished apartments for the use of furniture. Some of it may have come from stores in the building when they were being rented. I testified the stores had been eliminated in 1935, and I presumed it was because of the building ordinance not permitting them, therefore, I did not take into consideration the little income the stores would produce. I presumed they had no economic value—the fact it was in violation of the law to have them.

The transaction in December, 1935 was for \$107,000. I do not know how much mortgage was on it. I don't think there was any distress involved in the sale; not any more than the usual distress that was involved in all sales in 1935. It was not a corporation that owned the building. We acted as advisers and received a fee from the purchaser. I don't recall the owner's, but the purchaser's name was Colonel Bartley. The commission was figured in the \$107,000, we received half of the commission, as I recall it on that basis. This is the only transaction I recall in that neighborhood of a building anywhere near this size in 1935. I would not want to establish my opinion as to the value of the Claridge in August, 1935, on this transaction alone.

The other factors I would want to consider in forming this valuation besides this one sale, are all the factors that are necessary in arriving at the value of a piece of improved property. It must of necessity be the governing factor, regardless of what your approach might be, is the ability of the building to earn. It is a business. The amount that might be represented in brick or mortar in my opinion would be secondary. The quality as I mentioned before, that is a point to be considered and was considered at the time that I made the appraisal on this property,—that the construction of the building was fair. If the Claridge Apartments were vacant at the time I established my value, I would give it the same value as I would have given it now. Having the rental value, knowing what the rental value of the building was, the ability of the building to earn a fixed net income, not in 1935, but for the remaining life of the building, twenty-nine years, I would not say that would be speculative. It would be based upon one's knowledge of real estate over twenty-seven years. It would not be speculative.

You do not have the actual rental value, but you have your opinion of the rental value of the unit. We have lots of buildings we manage right in that neighborhood.

There were 147 rooms in the building that sold in December, 1935. There are 228 plus four apartments in the basement in the Claridge. In the Claridge there were 26 three room apartments, 78 two's, on reconsideration, there were 23, four rooms in the Claridge and they have a basement. There would be 12 rooms in the basement. I haven't considered the shops. They have been later turned into apartments. I don't know how many rooms there might be in the shops. They might possibly get in four or five more rooms in there for the shops. I can't as a real estate man, give the value of a building from the value of each room. This is a going proposition, sir, this is a building that has been built. It has a permanent value. What can you get for the units that you have? The size of the rooms of course will depend somewhat upon what you get in rental for them. But the number of rooms, it so happens in a building of this type, two room apartments, you can get almost as much rent for two room apartments as you can three room apartments in 1935, maybe five or seven dollars difference between the two and three.

When you are figuring that way, you are not figuring

any one particular year, you are figuring the remaining life of the building. I would figure one room almost as much as two on that basis, I would not say it was worth as much, I have said, almost as much. It would not be worth half as much.

As to whether or not the conditions I say exist in 1935 might not exist during the remaining life of the building, you take the cycle of real estate, you could go into the period of 1931, where possibly the rental value would not be as high in 1931. I valued it for 28 remaining years. I would not say one room was worth nearly as much as two over that span of twenty-eight years. I would say the ratio would be, I would say that the difference in the rooms does not work out economically. The additional room is not worth what it costs to produce. It is not worth one-third more.

You rent one room to respectable people who want a home, but haven't much income. I would say you rent a two room, not to a more respectable person, it would be equal. We haven't found there are more changes in a one room apartment than in a two room apartment.

In home neighborhoods the larger the number of rooms in an apartment, as a rule you get a better class of tenants, but this is not a home neighborhood, this is not a family neighborhood. It was 25 years ago, but it is not now.

I do not know how many tenants in this Claridge Building have been there since the building was built in 1924. I am going by principally by observation in the rest of the neighborhood. Most of the buildings in this neighborhood are unfurnished, and the tenants are required to sign a yearly lease in writing. They are under legal obligation to stay in there. It doesn't make very much difference to that class of tenant whether they have a lease or not. If I knew there were twenty tenants in the Claridge who had been there since 1924, that would not alter my belief as to the permanency of the tenants. I would
60 say, among other things, good management.

It wouldn't enhance the value of the building if they were there twenty years, and the chances they might stay twenty years more. You will figure when you put one hundred tenants in a building that some are going to remain a long time, others are going to move before their lease expires and some move out at the expiration of the first lease.

Assuming that there has been testimony by Mr. Henry

that this building had a gross rental of \$43,000, my valuation is three and one half times the rental, \$157,000. I know of buildings in that neighborhood that are bought at three and one half times the gross rental, I would say Mr. Henry's rental,—that was partly furnished. I will sell you a building, sell you one right now, sir, at 4546 Magnolia, sell it for less than three times the rental and that is furnished, however, not unfurnished. The whole building is furnished.

There are twenty-five percent of the 106 apartments furnished. I would sell the Claridge at four times the established income and that is not high, I would think in my opinion. I base my opinion on gross rentals on my knowledge of the various improved properties managed in that section of Chicago.

"Mr. Altman: I would like to point out after all the testimony we have had right here has been that 1940 was a better year, and this whole property sold for \$125,000. Just what are we doing in this case but a lot of talking?"

"Mr. Hamilton: There are a lot of things to be argued about any forced sale. I want to know whether that was the market value here.

"Q. (By Mr. Hamilton.) Mr. Bowers, if you had this proposition put to you that \$43,000 was the gross income of that building in 1935, 1936, 1937, 1938, 1939, 1940; that much or more, would that alter your opinion as to the value of the building?"

"A. If you are giving me something hypothetical, I can't base my opinion.

"Q. I will support it by evidence later on. I want to get your opinion.

"A. I couldn't answer that, sir, unless I had found a building which produced the \$43,000.

"Q. We are talking about the Claridge. Assuming a \$43,000 income from the gross rentals and twenty-five percent of the 106 apartments furnished, and that was a steady income from 1935 to 1940, that was the average stable income, gross income, would that alter your opinion as to the valuation of the building?"

"A. No, it would not."

61. "I would say that three and one half the gross rental is the correct way to figure with a record like that.

"Q. What other features other than income did you use in making this valuation?"

"A. What other features in making this valuation?

"Q. Other than income of this Claridge Building did you use in making the valuation?

"A. I have described that, as analyzing the neighborhood.

"Q. I am talking about any other feature, that is, whether you have considered the construction of the building, the cost of the building, the replacement value.

"A. Not the cost, no, not replacement, or the original. I could not consider."

This figure of \$16,500 net income is my opinion as to what the building will net over the remaining twenty-nine years. The gross income on that basis I figure about \$46,000, I think, what we figure to be the established gross income unfurnished.

"Q. What were the individual items of expense whereby you arrive at a net income of sixteen-five?

"A. I haven't those figures with me, but the net result after paying and setting up the necessary expenses was a net income of \$16,000.

"Q. You use a gross income here of \$46,000 and a net income of \$16,500. The difference is \$29,500. That must be the sum of the expenses. How would you break that down?

"A. I haven't those individual break-downs with me, but they consist of everything that goes into the operation of that building including the replacements of refrigerators and gas stoves and linoleum and repairs to the building, replacement of carpets, new roof, outside painting, decoration, taxes, light, coal, water, janitor, office help, and what not."

I cannot break down this figure of \$29,500 without my notes. We take out figures from the operations of other buildings. We have a number of other buildings, and use them as a guide to the proper cost of operation.

The rule of thumb is that the operating expenses would run from 60 to 65 percent of the gross income.

We check the amount of the taxes and in this case we obtained the figure from the Internal Revenue Department and accepted their figures and it was, I would not want to be definite on this, it seems to me, the figure they supplied was somewhere around \$4,500 taxes for 1935. That would be quite general. It might be less and it might be more.

"Q. How much did you allow for janitors?

"A. That would be all figured up. I haven't those figures here before me.

"Q. Can't you figure out from your twenty years' experience how much it would be for a janitor in a building of this size?

"A. I can't give it, no sir."

I would say to operate a 106 apartment building, you would have to have one union man and a helper. I haven't the record of the union scale before me, something like \$3.80 per apartment per month. It would not be \$300 a month for 100 apartments. It would be around that scale, is around \$3.65, but on buildings of this size the union are in the habit of making a rate with the owners. Generally that rate would be fixed at somewhere below the union scale. I think in this case we probably used the figure of \$200. Generally the top figure is \$250 for a building one man can handle alone. That is not for the helper. The helper would be extra. It depends upon the kind of deal you make with the union for the help, or possibly around \$90.00. The two of them together would be \$250 plus \$90.00.

It would not alter my opinion if the janitor got a hundred a month with the basement apartment, and the helper got \$90.00 a month. I would say he is paying him below the union rate.

"Q. If this building made that deal with the union men and they operate on union cards, would that alter your opinion as to the net rental?

"A. No it would not alter my opinion."

I do not know the terms of the deal. Mr. Henry might be a very good dealer, he might be able to deal for a very low wage scale for his employees.

"Q. I am asking you to assume that was the deal. Would that make a difference in your valuation?

"A. No.

"Q. How much do you allow for electrical bills for an apartment building of this size?

"A. I haven't those figures before me. The total cost of operating the building would be about 65 percent of its gross earnings.

63- "Q. I know you are an experienced man. You have come to be an expert in twenty seven years in this neighborhood. Can you give some estimate, not binding, not exact figures, as to what would be the approximate electricity bill for a building of this kind?

"A. I don't want to deal in generalities. I don't believe that is possible here, it would merely be an estimate.

In making my appraisal, the income tax department didn't give me any aid in the way of a list of the bills. I just called up about the taxes.

"Q. Do you or do you not know the approximate cost of the electricity?

"A. I am unable to say.

"Q. How much for coal?

"A. I would not want to estimate it.

"Q. How much would be allowed for coal in the buildings in general in this neighborhood?

"A. I couldn't answer that.

"Q. 106 apartment buildings?

"A. I couldn't answer that.

"Q. How much is allowed for decorating buildings in general, apartment buildings?

"A. That would be all part of your 65 percent of your total cost, the total income. You must remember in any expenses in a building there are many items that do not recur each year but will recur over the remaining life of twenty-nine years, such as replacements of your linoleum, of your floors, such as gas stoves, such as your stair carpets, refrigerators, electric light fixtures, your plumbing fixtures. Many of those have to be replaced. It might not be in your particular calculations, but they are all taken into consideration in connection with determining the cost, the 65 percent of the gross income for operating a building over this twenty-nine year period, and it doesn't make much difference how you operate it, it is there, and everybody knows you have to do it.

I arrive at 65% from our knowledge of operations of buildings of this type.

I would not know what percent of the 65% would be for coal. I can not break down the items of this 65% unless I go back to my office and get the figures. I cannot do it right now.

"Q. Kewanee boilers are used in the Claridge Apartment building. Both are Kewanee boilers. They are Kewanee portable boilers No. 315. I do not know the cost in August 1935 to lay pressed brick per thousand, or what the cost for pressed brick was at that time. Nor do I know the cost of the mason work on this property. I do not know what the cost of the terrazzo flooring per square

feet was in August, 1935 in this building. There is a picture molding in the living rooms of the building.

There are inner door beds in the building. I would not know without checking my notes, what kind of gas stoves were in the building. The common ordinary range found in a place of this kind, four burner. I do not know without checking it. I do not know what kind of flooring in the kitchens of this building. They are covered with linoleum. I don't know what it is. I believe the floors in the dining rooms are hard wood. Oak I would say. I would not say what particular quality of Oak.

Q. Isn't it a fact they are clear oak floors, the very best selected oak?

A. They don't look it. The apartments I saw, very dirty floors, pretty bad shape, I would say.

I do not know of my own knowledge whether there is selected clear oak flooring in this building. I do not know of my own knowledge whether clear select oak floors are in the living rooms of this building. I do not know the cost of lumber in the building on August 1, 1935, in this building, or what would be the cost of lumber. There is medium grade of hardware in this building now. I don't know what the finish is. I do not know the cost of carpenter labor on this building August 1, 1935. I think the hot water heating system for the use of the Claridge tenants is a submerged heater attached to boilers. I do not know what make of pumps they have in the building. I did not notice them. They should have, I imagine, because all buildings have them. The lavatories in this building are low tank pipe combination with Sloan valves. I did not notice the construction of them. I did not examine them. As to whether they are vitreous china, I presume so, I didn't examine them for china. I do not know what would be the cost of the plumbing in this building on August 1, 1935.

I constructed buildings for myself in the City of Chicago. It was stores and apartments, straight apartments. One building had 9 small apartments, small apartments, and two stores, and twelve apartment building, and had an interest in the construction of some others with thirty-six flats. They were located on the North side in Chicago. I haven't the address with me.

We let the contracts to builders as most buildings are built. We constructed the building. We were on the job every day while the building was being built, every day personally.

"I do not know the location of this big building. I do not know when it was built. Nothing in the last ten years, nothing was built in the last ten years.

The stores were built on Lawrence Avenue. I don't recall the exact number of the address. If you want to pin me down, I can't give it to you. I haven't the number in my mind.

I do not know whether this terrazzo floor in the Claridge Apartments building had any cracks in it in 1935. I didn't fix the value of the building in 1935 on the basis of the cracks in the terrazzo floor. I mentioned that as being a point to illustrate it is not a first class constructed building; medium grade.

"Q. Mr. Bowers, it is a fact your appraisal of this building is based entirely upon rentals, the income from the building, and not at all on replacement value, August 1, 1935?

"A. That is right."

Redirect Examination.

I considered the income and the general business conditions at that time and applied to real estate conditions of that time.

Recross Examination.

Your replacement is not to be considered. Buildings are worth when they are built what you can get for them, not what they cost to produce.

"Q. In other words, you don't think the question what it will cost to replace the building is to be considered at all in fixing the value?

"A. It has to be considered, but the replacement cost is not a measuring stick to determine the value."

In other words, in making this value, I did not consider the replacement cost. I could have determined that, but didn't feel it was pertinent to it.

"Q. Therefore it wasn't considered in fixing the valuation, because you didn't know it? Isn't it a fact the Assessor's Office of Cook County in determining the value of properties, buildings, they consider only the replacement cost and not at all the selling price?

"A. Unfortunately, that is true."

I have not done any appraisement for the assessor.

Office, but I have assisted him in all his land values the last fifteen years.

66 The Court: I suggest you make an objection at this point. The reason is—it may not be your fault—that you are departing entirely from rules which are well established in income tax laws as to what is the basis for determining fair market value of property. The fair market value of property, according to the definition which has been described in cases over and over again is the amount a willing buyer would pay a willing seller for the property at the time and under the circumstances.

Mr. Hamilton: At the same time what a willing buyer would pay for it, whether he would consider replacement costs as well as the income feature too, whether that is one of the things that make up what a willing buyer would pay, replacement costs rather than income. That is what I am arguing and not anything else. I think that is all.

Mr. Altman offered photostats of the Complaint in the Assessor's office, consisting of Affidavits and assessments by the assessor. Mr. Hamilton objected to this evidence on the ground that it furnishes no criterion of the value of a building property on the basis of an assessor's valuation and on the further ground that affidavits are not in any way connected with the Petitioner corporation and are not binding on it.

The Court: I don't see anything for it, Mr. Altman, but to sustain that contention unless you can connect them.

The Assessor's Report was offered in evidence over objection, and received, marked RESPONDENT'S EXHIBIT E.

MILTON C. KUEHN, called as witness for respondent, testified:

Direct Examination by Mr. Altman.

My name is Milton C. Kuehn, 1819 Glenview Avenue. My residence is Park Ridge, Illinois. I am a business executive at 310 South Michigan Avenue, Chicago, Illinois. I am employed by Securities Service Corporation.

I was employed by Securities Service Corporation in the years 1935 and 1936. I was an officer at that time in the Securities Service Corporation. I am familiar with the reorganization of the Claridge Building Company and the

transfer of the subject property at 4501 Malden to the Claridge Apartments Company through a 77-B reorganization. I was president then. I signed respondent's Exhibit B, being the 1936 income tax return of the Claridge Apartment Company. This was originally a Straus bond issue and Securities Service Corporation serviced the committee and it was the practice at the reorganization, due to a Trustee's holding the stock, to elect certain members of our organization officers and directors of the corporation. Referring to the schedule in this return marked "Painting and Decorating, \$3,324.87" that amount represents the entire amount spent and actually paid out in the year 1936 for painting and decorating on the 4501 Malden property.

67 Referring to Schedule M entitled "Reconciliation of New Income and Analysis of Changes of Surplus" and Item 6 of that schedule with the following entries—painting and decorating, these two figures for repairs and decorating are included in the three thousand dollar figure that we just talked about on the typewritten schedule.

This \$389.60 I did not refer to in that typewritten schedule. I referred to painting and decorating that may have been included under painting and decorating, although I can't be certain without an examination of the corporate books.

We do not have the corporate books in our possession. We turned them over to Mr. Henry's representative, I believe.

Referring to the return in evidence as Exhibit C for 1937, I did not sign that return. It must have been turned over in the year 1937, I believe. At the time I signed the return in 1936 we did have possession of the books.

It is my testimony that the item in surplus in regard to painting and decorating is included in the typewritten schedule attached to the return. Painting and decorating expenses for federal income tax purposes were treated as deductions in the year in which they were made, whereas the corporate books were on an accrual basis and they were deferred, so much being written off each year, or each month, generally the accrual or the deferment being on a twelve months basis, all leases being on that basis.

The \$1300 item of painting and decorating on Schedule M represents the amount that was deferred on the corporation's books. I can't say as to the repairs, but I am inclined to think, from the way it was handled out here that that was the case.

The practice was to deduct on the income tax return for painting and decorating all expenses in the year covered by the return.

I was connected with Straus & Company in 1924.

Q. What was their practice with regard to floating bonds on these apartment buildings; did they normally float an issue the proceeds of which were sufficient to pay for the entire construction of the building?

Mr. Hamilton: I will object to that. What he does generally has nothing to do with this case.

The Court: Sustained.

68 Q. (By Mr. Altman.) Are you familiar with the general practice of Straus with regard to it in 1924, in floating bond issues on apartment buildings?

Mr. Hamilton: The same objection.

The Court: I sustain the objection.

I recall something with respect to the payment of interest and principal on the bonds, but that is quite a ways back and I don't remember all of the details.

Q. (By Mr. Altman.) Do you remember whether the issue, or do you know whether the bond issue on this property back in 1934, which was \$340,000—is that right, Mr. Hamilton?

Mr. Hamilton: That is what the loan was.

Q. (Continuing.) —\$340,000, whether that \$340,000 bond issue which was handled by Straus Securities represented the entire construction cost of the building put up at 4501 Malden?

Mr. Hamilton: I object. He has not shown any qualification whereby he could know.

The Court: He asked whether he knows, and I assume he will answer the question truthfully. Objection overruled.

A. (By the Witness.) I don't know.

I only recall remotely the reorganization details of the building in 1935. I will have to refer to our files to know more about it.

Three pages of the minute book of the Claridge Apartments Company excerpted from the Director's meeting on July 1, 1935 were offered and received in evidence as Respondent's Exhibit F.

Excerpt from the Board of Directors meeting of the petitioner August 7, 1935, being three pages were offered and received in evidence as Respondent's Exhibit G.

Excerpt from the minutes of the meeting of the stockholders of the petitioner held on September 9, 1935, consisting of three pages were offered and received in evidence as Respondent's Exhibit H.

"Q. (By Mr. Altman.) Now, do you know whether the petitioner, this new company that came out of 77-B of which you were president, actually paid the reorganization expense during the remainder of 1935 or early in 1936, Mr. Kuehn?

"A. They did pay them and I believe it occurred the latter part of 1935. Yes, it was the latter part of 1935.

"Q. There is no doubt in your mind but what they were all completely paid by the early part of 1936?

"A. Oh, yes.

"Q. And your answer is they were?

"A. They were, yes."

69 The bonds of the old company were deposited with the American National Bank. The committee designates the depository. In this case it was the American National Bank. All bondholders who cared to become a party to the plan of reorganization deposited their bonds with the depository. After the court approved the plan of reorganization trust certificates were issued. Whether the American National Bank, the depository, had cancelled the bonds up to this time, I cannot testify. I don't know. These bonds were not turned over to the Securities Service Corporation, or this other company, the Claridge Apartments Company. As to whether Mrs. Case was paid the \$1400 for the furniture, she owned in the building, I don't have a definite recollection on that matter, but I do recall the item coming up.

Mr. Henry: Part of it was paid to her out of the money from the old company and then the balance was paid out of the rents from the new company. The old company, the Claridge Building Company, paid part of the \$1400 to Mrs. Case.

The final decree of the District Court in the 77-B proceedings, dated March 1, 1937 was offered and received in evidence as ~~RESPONDENT'S EXHIBIT I~~.

Cross-Examination by Mr. Hamilton.

Looking at the respondent's Exhibit B, Schedule E, is an item of \$1336.02 that refers to repairs. The rider attached on schedule B gives an item of painting and deco-

rating of \$3,324.87 that refers to decorating. So there were two items, one of repairs and one of painting and decorating separate for that year. That was the amount of the decorating and the amount of repairs that we paid that year. As to whether or not during the year 1936 under my management, certain decorations in the Claridge were incurred and not paid for and the bills not paid by December 31, 1936, I can't testify to that without consulting the books. I wouldn't know. I don't believe that is the case. I filed the return to the government under the accrual basis.

All the repairs and decorating that were paid during the year 1936 were charged as expense against the income, and reported in this return for the year 1936.

70 "Q. And those that were not paid for were carried over to the next year, is that right?

"A. I can't answer that question."

It states in the minutes of the Claridge Apartments Company that there were \$8,000 of accrued money in the treasury of the Claridge Corporation at the time of this reorganization. This \$8,000 was paid out by the new corporation. They were indicated as a disbursement on the books of that corporation. I can't answer whether the \$18,500 was paid out in its entirety by the new corporation without an examination of the books. I believe it was made out by the corporation. It came into that corporation and it had to be disbursed through that corporation. It could not be otherwise. If I remember correctly, it was augmented by the funds that were in the hands of the old corporation at the time of the reorganization, and it was used to pay general real estate taxes, and reorganization expenses approved by the Court. And included in that is whatever nominal costs there may have been of organizing this new corporation, Claridge Apartments Company, I suppose.

"Q. Weren't there attorney's fees for it and also state fees you had to pay out of it?

"A. Well, yes,—I am not sure about that, for this reason: I don't know whether that came out of the general till or whether it was earmarked reorganization expenses or not. The books of course, will reflect that and I don't have access to these books.

"Q. As part of the reorganization it was required to organize this Claridge Apartments Company before the

reorganization was complete so it could accept the title to the property, was it not?

"A. Yes, I think that is true."

As to the books of Claridge Apartments Company for the year 1937, Mr. Hamilton states:

We have not got possession of the ledger, but I think we have all other books, that is the daily receipts. From November on, we have them.

Your Honor, the only book he asked me to produce was the ledger account for the year 1937. I have searched all over creation, all through the loop in every office I know in my office and the Claridge Corporation, Claridge Apartments Company office, and I couldn't find any book. He did not make any general request to produce all the books, only that one book, that I know anything about.

Respondent Rests.

71 MR. CHARLES F. HENRY recalled as witness on behalf of Petitioner testified on direct examination as follows:

I am the same Charles F. Henry who testified yesterday in this case. I examined the building Mr. Bowers testified about yesterday that was sold in December 1935. I examined it about twice every year. I examined it in 1935.

Comparing it with Claridge Apartments Company building, the building is inferior to 4501 Malden Street in construction. The basement is entirely unfinished there excepting the janitor's apartment in it. The vestibule is seven feet high, and not nine feet high, as Mr. Bowers testified yesterday. If they were nine feet high, as he testified, it would put the building in a different class, according to city ordinance, and would make a fireproof building in entirety out of the whole building; the Claridge Building, the entire first floor, is finished and there is a very expensive lobby there, and it is a higher building, because we have to go down five steps into the lobby.

The building had been handled by a trustee, the 4512 Malden Street building I am referring to now, and the plaster was badly cracked in many of the apartments, and it needed decorating very badly, and the building was in a general run-down condition. The fixtures were very inferior. They had those little stoves, what we call the

small cookers, and they had a very cheap refrigerator, and so on. The fixtures throughout the building were inferior to the 4501 Malden Street Building.

It is not as good in value per room per flat as the Claridge Apartment Building and the rents, comparing them with Malden Street, were a little bit lower.

The last I checked the building to compare the rents with 4501 Malden Street which was across the street, they were lower.

As to my experience in buying trust certificates from Straus Securities Company, if they had a Claridge certificate offered to them for sale, they would call me up and say, "Regarding the Claridge certificates, I have ten shares. Do you want to buy them?" I said "All right, how much do you want for it?" They would say, "\$24. a unit, or \$40. a unit." I wanted to buy those units, so 72 I paid that to them, what it cost them. I don't know.

Straus & Company bought them. I would buy them from Straus & Company direct and the difference was theirs. They might make five points and they might make ten points profit out of that share. I never knew what they paid for them, but I know I paid for them up as high as \$35. per unit.

As to the terrazzo floor in the Claridge Apartment Building lobby being cracked, as I explained yesterday, the Claridge lobby is very large and the terrazzo floor is made in one slab. Now if any part of that slab should settle just a fraction of an inch it would cause a little twist and a crack there. When cement sidewalks are laid, or streets are laid they always cut the cement in the street or the sidewalk so if there is a little settlement, which there always is, it would not cause a crack, it would not twist and it would not crack. It is impossible to put a foundation in such a large area in one slab over a period of years, and not have a small crack here or there.

There is no cornice and no mold in the living rooms in the Claridge Apartments.

The Claridge Apartments gives to its guests or tenants what we call a hotel service. If they want a maid we furnish a maid. We have a switchboard for the building, and if anyone wants to call in during the day, we take the messages for them. If they want a telephone call in their apartments, we call them down. If parcels come in we receive them, pay the money for the parcels for them. We give them what we call hotel service.

They do not have that in the building across the street. In the building across the street they have enameled iron plumbing throughout. In the Claridge they have vitreous china, which costs just about double what enameled iron costs. The apartment fixtures are vitreous china.

Cross-Examination by Mr. Altman.

I accompanied Mr. Bowers in his examination of the Claridge Apartments yesterday. I did not let him in the building; Mr. Bowers had been over there once or twice. I was up there the other evening, Tuesday and Mr. Bowers came over there. I happened to be there and he was checking, he was standing in the lobby, in the vestibule there. I went into some of the apartments with him, and showed him whatever he asked to see. Part of the plumbing in the building was vitreous enamel, and the rest of it enameled iron, the same as across the street.

Mr. Hamilton: I have just one question.

Redirect Examination by Mr. Hamilton.

"Q. Assuming, as Mr. Bowers did, that the rents were \$46,000, the rents expected from this building a year, what would be the expected and reasonable cost of operating the building generally, or of any building generally throughout the country, in your opinion.

"A. The same size building, \$14,500 without taxes, and he, Mr. Bowers, assumed the taxes were \$4500.

"Q. Assuming Mr. Bowers' figure of \$4500 probably taxes, in a building of this kind, the net rents would be how much?

"A. \$26,500.

"Q. And applying the percentage of valuation of—did he say 9.546 on that? What would be the value of the ground and building?

"A. \$256,500.

"Q. And what in your opinion would be expected to be the cost of the lot; what would be the net value of the building?

"A. \$241,000 plus.

—All Rest.

74 The foregoing is the substance of all the evidence, oral and documentary, adduced at the hearing of the

proceeding by the United States Board of Tax Appeals (now the Tax Court of the United States), and the taxpayer, Claridge Apartments Company, tenders and presents the foregoing as a statement of the evidence in the cause and prays that the same be made a part of the record on review.

Walter Hamilton,

Counsel for Petitioner on Review.

The above and foregoing statement of evidence contains the substance of all the evidence material for a review of the rulings and decision assigned as error herein by the petitioner on review.

J. P. Wenchel,

J. P. Wenchel,

Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent on Review.

75

PETITIONER'S EXHIBIT NO. 3.

The Plan of Reorganization, Included Herein Has Not Been Approved or Disapproved by the United States District Court Which Authorized Its Submission to Bondholders and Stockholders for Their Consideration.

Reorganization Plan.

This agreement made and entered into this 27th day of November, 1934 by and between

George W. Rossetter,

Jay C. McCord,

Sidney H. Kahn,

not personally, but as the Claridge Apartments First mortgage Bondholders' Committee constituted under deposit agreement dated September 9, 1931, party of the first part, (hereinafter referred to as the "Committee"),

Claridge Building Corporation, an Illinois corporation, party of the second part, (hereinafter referred to as the "Owner"), and

Minnie H. Case,

party of the third part,

Witnesseth:

On March 25, 1924, Claridge Building Corporation issued its 6½% first mortgage bonds in the aggregate principal

amount of \$340,000.00 and to secure the payment of said bonds and the interest coupons pertaining thereto, executed its trust deed and chattel mortgage to Melvin L. Straus as Trustee, dated March 25, 1924, conveying the property known as the "Claridge Apartments" located at the Northeast corner of Malden Street and Sunnyside Avenue, Chicago, Illinois. First mortgage bonds in the amount of \$277,000.00 remain outstanding and unpaid. Defaults, occurred in the payment of principal and interest on these bonds and the Trustee, on October 1, 1931, filed his bill of foreclosure in which all of the bonds were declared immediately due and payable. A decree of foreclosure was entered on February 19, 1932 but no sale of the property has been had. The Committee was organized on September 9, 1931 in order to protect the interests of the first mortgage bondholders and the Committee now has on deposit with the Depository \$258,600.00 of the bonds or approximately 93% of the total outstanding issue.

Minnie H. Case has represented to the Committee that she is the record holder of the title to the property but that she is holding title to the property for the use and benefit of Claridge Building Corporation. Certain of the apartments in the building have been furnished with furniture, linens and other equipment and Minnie H. Case has represented that she is the owner of such furnishings, except in those apartments which have been furnished by the Trustee. The Trustee is and for some time past has been in possession of the property and has collected the rents.

On June 16, 1934, Claridge Building Corporation filed its petition in the District Court of the United States for the Northern District of Illinois, Eastern Division, Number 56230, under Section 77 B of the Bankruptcy Act as amended, in which it asked that a reorganization be completed pursuant to the provisions of said Bankruptcy Act. All of the parties hereto have agreed upon a plan of reorganization which they are ready to submit to creditors and to the court in said proceeding under Section 77 B for their approval.

Now, Therefore, in consideration of the premises, 76 and of the mutual covenants and agreements of the parties hereto, the parties hereto do hereby agree to the following plan of reorganization:

1. A new corporation shall be organized under the laws of the State of Illinois with an authorized capital stock

consisting of 3,080 shares of common stock without par value, or with such par value as may be agreed upon by the parties hereto. Upon completion of the reorganization, Minnie H. Case shall convey title to the property to said new corporation and the corporation shall execute a confirmatory quit-claim deed to the new corporation. 2,770 shares of the common stock of the new corporation shall be issued to three Trustees to be selected by the Committee subject to the approval of the court. Trust certificates shall be issued to the holders of the first mortgage bonds and each first mortgage bondholder shall receive a trust certificate representing one share of stock for each \$100.00 in face amount of bonds owned by him. The stock so issued to said Trustees shall constitute 90% of the outstanding stock of the new corporation. 10% of the outstanding stock of the new corporation shall be issued to or upon the order of the Owner.

2. The new corporation will enter into a trust agreement with the three Trustees. The trust agreement shall endure for a period of ten years subject to termination in the manner herein described. Not later than sixty days prior to the expiration of the first two-year period of said Trust, the Trustees shall call a meeting of all trust certificate holders, or in lieu of such meeting, shall conduct a referendum of all trust certificate holders for the purpose of determining their wishes as to the termination of the trust. In the event that 51% or more in amount of the certificate holders vote in favor of the termination of the trust, then and in such case, the trust shall be dissolved as of the date of the end of the first two-year period and the stock of the new corporation in the name of the three Trustees shall be transferred and issued pro rata to the then holders of the trust certificates. If the holders of 51% or more in amount of the trust certificates do not vote in favor of the termination of the trust, then the trust shall continue. If at the expiration of the first two-year period the trust is continued as hereinabove provided, then a similar meeting or referendum shall be held prior to the end of the second two-year period to determine whether the trust shall be then terminated, in the same manner as hereinabove provided at the end of the first two-year period. Similar meetings or referenda shall be held prior to the end of each two-year period to determine whether the trust shall be terminated at the end of such period,

unless the trust shall theretofore have been terminated by the certificate holders or by a majority of the Trustees who shall have the power to terminate the trust at any time. In any event, the trust shall terminate at the expiration of ten years from the date of the original trust agreement. The committee shall nominate three persons to serve as the original Trustees, but said Trustees shall be satisfactory to the court. The Committee shall also designate the Depositary of the Trustees. Any vacancy among the Trustees shall be filled by the remaining Trustees. The Trustees shall have the right at any time to remove the original depositary and to appoint a successor depositary. The trust agreement shall provide that any of the Trustees may be removed and a successor Trustee appointed at any time upon the written direction of a majority in amount of the holders of the outstanding trust certificates. The Trustees shall be entitled to receive usual and reasonable compensation for their services, but the annual compensation of the Trustees in the aggregate shall not exceed 4% of the gross income of the new corporation. The Depositary shall be entitled to receive reasonable compensation for its services, which compensation shall not exceed the regular fiduciary charge for such services. The compensation and expenses of the Trustees and their Depositary shall be paid by the new corporation. The Trust agreement shall be in form satisfactory to counsel for the Committee.

77 3. The trust agreement shall provide that the Trustees shall not vote the shares of stock held by them in favor of a resolution authorizing the sale or mortgage of the property unless written notice of the terms and provisions of the proposed sale or mortgage has been given to all certificate holders at least thirty days before the date of the meeting of stockholders at which it is proposed to vote upon such proposed sale or mortgage, and the Trustees shall not vote in favor of any such proposed sale or mortgage if one-third or more in amount of the holders of the trust certificates dissent in writing from such proposed sale within thirty days after the giving of such notice. The Trustees shall also have the power to sell the shares of stock held by them; but the trust agreement shall provide that the Trustees shall not sell the shares of stock held by them unless written notice of the terms and provisions of the proposed sale has been given to all certificate holders at least thirty days before

the date of the proposed sale, and the Trustees shall not sell such stock if one-third or more in amount of the holders of the trust certificates dissent in writing from such proposed sale within thirty days after the giving of such notice. The Trustees shall have the right to apply to any court of competent jurisdiction for its approval before completing any sale or mortgage of the property or before completing any sale of the stock held by them, but shall not be required so to do.

4. The new corporation shall by written agreement indemnify the present Trustee under the bond issue against any and all liability which he may suffer or incur by reason of his operation of the property (other than for wrongful acts of the Trustee) and against any and all taxes, assessments or other governmental charges which may be levied or assessed against him covering the period of his possession of the property. The new corporation shall also by written agreement indemnify the Committee against any and all taxes, assessments or other governmental charges which may be levied or assessed against it and against any and all liability which may be suffered or incurred by the Committee by virtue of the reorganization plan, including the expenses and reasonable attorneys' fees in the event that litigation is instituted against the Committee or any member thereof.

The new corporation shall assume and agree to pay the reorganization expenses hereinafter referred to and these expenses shall be paid in full before any dividends shall be declared or paid upon the stock of the new corporation. Subject to the approval of the court, the following reorganization expenses shall be allowed:

(a) To cover the general expenses and compensation of the Committee including the charge of Securities Service Corporation 1% of the face amount of deposited bonds plus out-of-pocket expenses;

(b) Charge of the Depositary on the basis of three-fourths of 1% of the face amount of deposited bonds plus out-of-pocket expenses;

(c) Compensation of counsel for the Committee;

(d) Compensation of counsel for the owner.

In addition there shall be allowed the expenses and charges in the foreclosure proceeding, including the Trustee's fee, the fee of Trustee's counsel, court costs and Master's fees. There shall also be allowed and paid the actual expenses to be incurred in connection with the organization.

of a new corporation, printing of the trust agreement and the new securities, stamp taxes, title guaranty expenses, court costs in the bankruptcy proceeding and other similar items.

Upon consummation of the reorganization, the present Trustee shall surrender possession to the new corporation and all net assets of the Trustee over and above the liabilities of the Trustee in connection with the operation of the property shall be applied towards the payment of the reorganization expenses.

78. 5. Upon consummation of the reorganization, Minnie H. Case shall execute and deliver to the new corporation a bill of sale covering all of the personal property in said premises owned by her. The new corporation shall pay to Minnie H. Case for said personal property, the sum of \$1,400.00, which amount shall be payable to her without interest monthly, in payments equivalent to 20% of the rental collected from the apartments in which the said personal property is located, commencing on the date the reorganization is completed. Until said reorganization is completed, the present agreement between Melvin J. Straus, Trustee, and Minnie H. Case, covering the rental of personal property shall continue and said Minnie H. Case shall keep all of said personal property in good condition and repair. She shall not be required to make replacements of a permanent nature other than replacing linen to the extent that may be required.

6. The new corporation shall enter into a management contract with Minnie H. Case. Said contract shall provide for compensation to her equal to 5% of the gross collections payable monthly and in addition, the manager shall be entitled to the use of a three-room apartment for herself or an assistant manager without charge. Said contract shall be subject to termination at any time that the trust is terminated. In the event that the Trustees are dissatisfied with the management of Minnie H. Case, they shall have the right to discharge her as manager and to terminate the contract, provided that the then President of the Chicago Real Estate Board, or any person designated by him, shall agree with the Trustees that the services of the manager are unsatisfactory after a hearing at which the manager shall be entitled to be heard. Said management contract shall provide for the personal services of Minnie H. Case and shall be non-assignable and shall terminate upon the death or disability of Minnie H.

Case. The compensation of any resident manager employed by the manager shall be paid to her. The funds collected by the manager shall be deposited in a bank satisfactory to the Trustees in a special account entitled "Name of corporation—Minnie H. Case, Manager" and the manager shall account to the new corporation on or before the tenth day of each month for all moneys collected during the preceding month. The manager shall be required to furnish a Fidelity bond in a company satisfactory to the Trustees in an amount equal to not less than two months gross income from the property, but the cost of such Fidelity bond shall be chargeable against the property.

7. The new corporation shall have three directors and so long as Minnie H. Case is alive and so long as the trust continues, said Minnie H. Case shall at all times be one of the three directors. In the event of the death of Minnie H. Case while the trust continues, the holders of 10% of the stock originally issued to Minnie H. Case shall thereafter have the right to elect one director during the continuance of the trust.

8. The Committee will submit the plan of reorganization to all depositing first mortgage bondholders and will file claims on their behalf and will also file the necessary consents to the plan of reorganization on behalf of depositing first mortgage bondholders. The corporation will file the plan of reorganization in the said bankruptcy proceedings and will consent thereto.

Unless all of the persons having any right, title, interest, lien or claim in or to the above mentioned property consent to and approve of the plan of reorganization or accept the new securities hereinabove provided for, it is distinctly understood and agreed that the approval of the plan of reorganization by the first mortgage bondholders consenting thereto and or the acceptance by first mortgage bondholders of the new securities hereinabove provided for, are expressly conditional upon the entry of a valid order or decree confirming or approving the plan of reorganization, binding upon direct or collateral attack on all the persons who have any right, title, interest, lien or claim in or to the above mentioned property, whether or not such persons consented to said plan of reorganization, or whether or not they accepted any benefit thereunder. If, for any reason the order or decree hereinabove referred to shall be reversed, set aside, or held void or invalid, all of the first mortgage bondholders

consenting to the plan of reorganization or taking any benefit thereunder, shall be restored to their former rights, title, lien or claim in and to said property as if this plan of reorganization had never been in existence.

9. It is understood that in executing this agreement the Committee does so solely as a Committee and not as individuals and only pursuant to and in connection with the powers granted to the Committee by the terms of said deposit agreement subject to all the rights of depositing bondholders as set forth in said deposit agreement. It is further understood that no individual member of said Committee shall be deemed personally bound by any covenant, undertaking or agreement herein, and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against the members of the Committee either individually or collectively by reason of any of the provisions hereof or by reason of any action or non-action taken or permitted to be taken pursuant to the provisions hereof.

George W. Rossetter,

Jay C. McCord,

Sidney H. Kahn,

*Not personally but as the Claridge
Apartments First Mortgage
Bondholders' Committee.*

Claridge Building Corporation,

By Albert A. Henry,

Vice President.

Minnie H. Case,

(Seal)

Attest:

Howard D. Henry,

Secretary.

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PETITIONER'S EXHIBIT NO. 4.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of
Claridge Building Corporation,
a corporation,
Debtor: } No. 56230.

PROOF OF PUBLICATION AND MAILING.

State of Illinois, }
County of Cook. } ss.

Violet Sundling, being first duly sworn deposes and says that she is the duly authorized agent of the Claridge Building Corporation, the debtor above named, and that pursuant to paragraph 10 of an order made and entered herein on the 10th day of December, 1934, aforesaid accompanied by a copy of the proposed plan of reorganization, a true copy of which is attached hereto, and marked Exhibit C, together with appropriate forms of proof of claim, true copies being attached hereto, and marked Exhibits D and E, by enclosing the same in stamped, addressed envelopes, addressed to each of the said creditors and stockholders at the addresses indicated on Exhibit B attached hereto, and depositing the same on the 15th day of December, 1934 duly sealed, in the United States Mail Box, located at 110 So. Dearborn St., in the City of Chicago, County of Cook and State of Illinois.

(signed). Violet Sundling.

Subscribed and sworn to before me this 19th day of January, A. D., 1935.

(Seal)

(signed) Cornelia Nye,
Notary Public.

PETITIONER'S EXHIBIT NO. 5.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—56236)

ORDER APPROVING REPORT OF SPECIAL MASTER ALLOWING CLAIMS AND ATTORNEYS' FEES AND CONFIRMING PLAN OF REORGANIZATION.

At Chicago, Illinois, in said District this 14th day of May, A. D. 1935, before the Honorable Philip L. Sullivan, Judge of the United States District Court for the Northern District of Illinois, Eastern Division.

This matter coming on to be heard pursuant to order entered herein on the 10th day of December, 1934, on the motion of the Debtor above named, for an order herein approving the Report of Edmund D. Adcock, Referee in Bankruptcy as a Special Master, with respect to claims filed, acceptances of the plan of reorganization, the plan of reorganization and fees for counsel, which were referred to him pursuant to the aforesaid order of December 10th, 1934, and the order entered herein on the 30th day of January, 1935, and upon the Debtor's motion for an order confirming the plan of reorganization proposed and filed by it herein and submitted to its creditors and stockholders pursuant to the aforesaid order of December 10, 1934, and for a further order authorizing and directing Claridge Building Corporation, the Debtor above named, Minnie H. Case, and Claridge Apartments First Mortgage Bondholders' Committee, to carry said plan of reorganization into effect; and it appearing to the Court that the provisions of said order of December 10th, 1934, with respect to the giving of notice and publication of this hearing, of the classification of claims and of the time and manner in which claims and objections thereto may be filed, of the time within which and the method of filing objections to and acceptances of the plan of reorganization herein, and the mailing of a copy of said plan of reorganization together with a copy of the said notice have been complied with; and the Court having examined the Report of Edmund D. Adcock, Referee in Bankruptcy as a Special Master, together with the exhibits therewith

submitted, and having heard the statements of counsel for the Debtor and for the Claridge Apartments First Mortgage Bondholders' Committee, and being fully advised in the premises, the court doth:

Find, Order, Adjudge and Decree as Follows:

1. That the Report of Edmund D. Adeock, Referee in Bankruptcy, as a Special Master, this day presented herein with respect to claims and acceptances of the plan of reorganization filed herein, the plan of reorganization, and the allowance of fees of counsel for the Debtor and for the Claridge Apartments First Mortgage Bondholders' Committee, be and the same hereby is in all things confirmed and approved.

2. That the following claims filed herein and reported upon by the Special Master aforesaid, be and the same hereby are allowed herein as claims within Class A-1 of claims as classified by paragraph two (2) of the order entered in these proceedings on the 10th day of December, 1934, in the amounts herein designated:

Claim No. 10 filed by Louis J. Behan	\$1,250.00
Claim No. 11 filed by Melvin L. Straus as Trustee	1,050.98
Claim No. 124 filed by Altheimer, Mayer, Woods & Smith	2,970.00

3. That the following claims filed herein and reported upon by the Special Master aforesaid, be and the same hereby are allowed herein as claims within Class A-2 of Claims as classified by paragraph Two (2) of the order entered in these proceedings on the 10th day of December, 1934, in the amounts herein designated:

Claim No. 1 filed by Katie Greer	500.00
Claim No. 5 filed by Edward B. Fogtman	1,000.00
Claim No. 6 filed by Melvin L. Straus as Trustee	16,400.00

83 Claim No. 7 filed by George W. Rossetter, J. C. McGord, and Sidney H. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee constituted under the Deposit Agreement dated September 9th, 1931

Claim No. 8 filed by Mrs. Dee Levine	500.00
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4. That the following claims filed herein and reported upon by the Special Master aforesaid, be and the same hereby are allowed herein as claims within Class B of

claims as classified by paragraph two (2) of the order entered in these proceedings on the 10th day of December, 1934, in the amounts as follows:

Claim No. 2 filed by Minnie H. Case, owner and holder of 198 shares of the common stock of Debtor corporation.

Claim No. 3 filed by Howard D. Henry, owner and holder of 1 share of the common stock of Debtor corporation.

Claim No. 4 filed by Albert A. Henry, owner and holder of 1 share of the common stock of Debtor corporation.

5. That the plan of reorganization proposed by the Debtor has been accepted by the holders of all of its outstanding common stock consisting of two hundred (200) shares, said acceptances having been filed within the time and in the form specified by the order entered herein on the 10th day of December, 1934.

6. That the plan of reorganization proposed by the Debtor has been accepted by George W. Rossetter, J. G. McCord, and Sidney H. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee, pursuant to Deposit Agreement dated September 9th, 1931, as amended, as the legal holders and owners of Two Hundred Fifty-Eight Thousand Six Hundred Dollars (\$258,600.00) in principal amount of first mortgage bonds deposited with the American National Bank and Trust Company of Chicago, the depository named and designated in the Deposit Agreement afore-said, which acceptance was filed on behalf of the depositing bondholders representing more than ninety-three (93%) percent in amount of the unpaid first mortgage bonds of the Debtor corporation.

That no objections were filed to the reorganization plan by any creditors or stockholders.

84 7. That the Debtor is not a utility subject to the jurisdiction of a regulatory commission and the provisions of subdivision (e) 2) of Section 77 B of the National Bankruptcy Act as amended, do not apply to it.

8. That the plan of reorganization as hereinafter amended is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders of the Debtor corporation; and is feasible and is a plan within the contemplation of and complies with the provisions of subdivision (b) of Section 77 B of the National Bankruptcy Act as amended; that it has been accepted

in writing after the filing of the petition of the Debtor herein, and pursuant to the order entered in these proceedings on the 10th day of December, 1934, on behalf of creditors holding more than two-thirds in amount of claims of each class whose claims have been allowed and are to be affected by the plan, and by all of the holders of the common stock of the Debtor corporation; that all amounts to be paid by the Debtor or by the corporation acquiring its assets, pursuant to the plan of reorganization herein, and all amounts to be paid to the Committee, whether or not by the Debtor or the new corporation, for services or expenses incident to the reorganization, have been fully disclosed in paragraph 4 of the reorganization plan and are reasonable.

9. That the general expenses and compensation of the Committee, including the charge of Securities Service Corporation, as set forth in subdivision (a) of paragraph 4 of the reorganization plan, are hereby found to be reasonable charges to be assumed and paid by the new corporation to be formed pursuant to the reorganization plan, solely because of the contribution of the members of the Committee and Securities Service Corporation to the formation of the reorganization plan in that they devoted their time and efforts in lengthy negotiations with the debtor and its representatives and other parties in interest, which ultimately resulted in the formulation of a feasible reorganization plan, and will be required to devote considerable time in the future in the completion of these proceedings, and in the formation of the new corporation and carrying out all the terms and provisions of the reorganization plan so that its full intent and purport may be accomplished, and that the approval thereof applies to this cause only and shall not be construed as a recognition or approval by this court of the legal right of the said Committee to make any charge for its services because of the terms of the Deposit Agreement dated September 9th, 1931, as amended.

10. That the plan of reorganization as hereinafter amended, and its acceptance by creditors and stockholders are in good faith and have not been made or procured by any means or promises forbidden by the National Bankruptcy Act as amended, and that all provisions of Section 77-B of said Act relating to said plan of reorganization and the confirmation thereof, have been duly complied with

to make the same effective and binding upon the Debtor and all of its creditors and stockholders whether or not their claims have been filed herein.

11. That the plan of reorganization proposed by the Debtor is hereby amended in the following particulars:

(a) Prior to the Distribution of the new securities to the bondholders, a referendum shall be conducted of all known bondholders to determine their wishes as to the creation of a stock trust as provided for in the present reorganization plan. If a majority in amount of the bondholders who vote, shall vote in favor of the trust, then the trust will be created and trust certificates issued in accordance with the present plan. If a majority in amount of the bondholders who vote, shall vote against the creation of a stock trust then the stock provided to be issued under the plan for the benefit of the first mortgage bondholders will be issued directly to the bondholders without a trust.

(b) If a stock trust is created, the present plan provides for a referendum at the expiration of each two years to determine whether the trust shall be continued, and provides that the trust will be terminated if a majority in amount of the certificate holders vote in favor of termination. The present plan is hereby amended to provide that if a majority in amount of those voting are in favor of termination, then the trust is to be terminated.

(c) If a stock trust is created, any certificate holder is to have the right at any time to receive the actual stock represented by his trust certificate upon surrender of the trust certificate and payment of the transfer taxes and the actual expense of transfer. Similarly, the Trustees are to have the right to require any certificate holder to accept his stock and surrender his trust certificate for cancellation.

(d) If a stock trust is created, certificate holders are to have the same rights with respect to examination of the books and records of the new corporation and with respect to the books and records of the Stock Trustees as are provided for stockholders of a corporation under the

86 Laws of the State of Illinois; provided, however, that no holder of a certificate known to be held directly or indirectly for the present owner of the property shall have the right to examine the record of the names and addresses of certificate holders.

12. That the plan of reorganization proposed by the

Debtor, as amended in the preceding paragraph, should be and hereby is approved, and confirmed and decreed to be in full force, virtue and effect as a feasible plan offered and accepted pursuant to and within the contemplation of Sections 77 A-B of the National Bankruptcy Act as amended.

13. Claridge Building Corporation, the Debtor herein, Minnie H. Case and George W. Rossetter, J. C. McCord and Sidney H. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee, are hereby authorized and directed to prepare and execute such documents or other instruments in writing as may be incidental, necessary and advisable to fully comply with and carry out the provisions of the plan of reorganization proposed by the Debtor as amended in paragraph 11 of this order, including the formation of the new corporation contemplated and provided for in paragraph one (1) of the plan, the execution and delivery of the trust agreement under the terms and conditions and subject to the restrictions contained in paragraphs two and three (2 and 3) of the plan of reorganization, and the amendments thereof set forth in paragraph 11 of this order, the actual expenses to be incurred in connection with the organization of the new corporation, printing of the trust agreement and the new securities, title guaranty expenses and other similar items to be assumed and paid by the new corporation, and this Court hereby retains jurisdiction to supervise and approve the preparation and execution of such instruments in writing, documents, certificates of incorporation and other documents necessary and incidental to the consummation of the plan of reorganization as amended and to pass upon and approve the same and the provisions therein contained.

14. Melvin L. Straus as Trustee, under that certain trust deed and chattel mortgage dated March 25th, 1924, from Claridge Building Corporation, the Debtor herein, which trust deed and chattel mortgage was filed for recording in the office of the Recorder of Deeds of Cook County, Illinois, on the 31st day of March, 1924, as document No. 8340647, is hereby directed to release said trust deed by appropriate release deed within ninety (90) days from the date hereof unless such period be hereafter extended by order entered herein, and if prior to the expiration of the said ninety (90) day period or extension

thereof, said Melvin L. Straus as trustee has not released the said trust deed and chattel mortgage then, Edmund D. Adeock is hereby appointed Special Master in Chancery for the purpose of releasing said trust deed and chattel mortgage and is hereby authorized, empowered, and directed to execute, acknowledge, and deliver an appropriate release deed releasing the lien of the said trust deed and chattel mortgage; that all of the bonds and interest coupons secured by said trust deed and chattel mortgage are hereby declared to be satisfied and of no further force and effect, and the holders thereof shall be entitled only to receive the new securities provided for in said plan of reorganization as amended, and each and all of the holders and owners of bonds and interest coupons, payment of which is secured by said trust deed and chattel mortgage, whether deposited with the depository named and designated in the Deposit Agreement aforesaid or not, shall be and they hereby are forever jointly and severally enjoined from commencing or prosecuting any proceedings of any nature whatsoever either at law, in equity or otherwise against the Debtor, its successors and assigns, or against any of the property of the Debtor or any of said bonds and or interest coupons and or said trust deed and chattel mortgage.

15. George W. Rosseter, J. C. McCord and Paul Steinbrecher, who have been nominated by the Claridge Apartments First Mortgage Bondholders' Committee to serve as the original Trustees under the trust agreement provided for in the plan of reorganization as amended, be and they hereby are approved and confirmed to serve as such Trustees.

16. That Claridge Building Corporation, the Debtor, Minnie H. Case and George W. Rosseter, J. C. McCord, and Sidney H. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee, shall report in writing to this Court on or before the 1st day of July, 1935, all acts and things done and performed by them in the execution and confirmation of said plan of reorganization as amended, and the documents executed by them incidental and necessary thereto; and this cause is hereby continued until said date at the opening of Court without further notice, for the purpose of examining and confirming said report.

17. That Melvin L. Straus as Trustee aforesaid who

is now in possession of the premises of the Debtor known as "Claridge Apartments", being the premises referred to and described in the plan of reorganization, he and he hereby is directed to file his report and accounting within twenty (20) days from the date hereof and upon approval thereof he is directed to surrender possession of the property to the new corporation to be formed as provided for in the plan of reorganization as amended, and within five (5) days subsequent to the completion of the organization thereof, and to pay to the said corporation all cash on hand and to assign to it all accounts receivable, the new corporation to assume the accounts payable of the said Melvin L. Straus as trustee aforesaid, if any there may be, and shall also deliver to the new corporation the books and records necessary to carry on the management and operation of the "Claridge Apartments", the property mentioned and described in the plan of reorganization.

18. The Court reserves jurisdiction herein to enter such further order as may hereafter be deemed necessary and proper in connection with carrying out the terms and provisions of the amended plan of reorganization as approved and confirmed herein and terminating the cause.

Enter:

Judge.

Dated this 14th day of May, 1935.

89. PETITIONER'S EXHIBIT NO. 6.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption--56239)

ORDER APPROVING DOCUMENTS.

This cause coming on to be heard on the Petition of George W. Rossetter, J. C. McCord and Sidney H. Kahn; not personally but as the Claridge Apartments First Mortgage Bondholders' Committee, for the entry of an order approving the following documents and all the provisions thereof, prepared by the Petitioners as contemplated by the Plan of Reorganization heretofore confirmed herein and pursuant to the provisions of the order confirming said Plan of Reorganization, copies of which

documents are attached to said Petition as Exhibits A to F; both inclusive:

1. Certificate of Incorporation of the new corporation.
2. Trust Agreement (including Trust Certificate form of which is contained in Pages 2, 3, 4, and 5 of the Trust Agreement, copy of which is attached to the Petition as Exhibit B).
3. Management contract between the new corporation and Minnie H. Case.
4. Surrender Agreement between Melvin L. Straus, as Trustee, and the new corporation.
5. Indemnification agreement between the new corporation and Melvin L. Straus, as Trustee.
6. Indemnification agreement between the new corporation and Claridge Apartments First Mortgage Bondholders' Committee.

And the Court having examined the said petition and the exhibits A to F, both inclusive, attached thereto, and having heard the statements of counsel and Claridge Building Corporation, the debtor herein, and Minnie H. Case having approved all of said documents, and the Court being fully advised in the premises, Doth Order:

1. That all of the documents hereinabove referred to, copies of which are attached to said Petition as Exhibits A to F, both inclusive, including the form of Trust Certificates contained on Pages 2, 3, 4, and 5 of the Trust Agreement, copy of which is attached to the petition as Exhibit B, and all of the provisions thereof, be and the same are approved in all respects;

2. That the Claridge Building Corporation, the Debtors herein, Minnie H. Case, and George W. Rossetter, J. C. McCord and Sidney M. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee, be and they hereby are authorized and directed to cause all of said documents, copies of which are attached to said Petition as Exhibits B to F, both inclusive, to be executed and delivered and certificates of Stock of the new corporation to be executed and issued to the bondholders who have voted against the trust, and Trust Certificates in the form set forth in Pages 2, 3, 4, and 5 of Exhibit B to be executed and issued to all other bondholders, and certificates of stock to be issued to the Trustees under said Trust Agreement and to or upon the order

of said Claridge Building Corporation, all in accordance with the provisions of the Plan of Reorganization.

Enter:

William H. Holly,

Judge.

Dated at Chicago,
July 22, 1935.

91

PETITIONER'S EXHIBIT NO. 7.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—56230)

PETITION.

Your Petitioner, George W. Rossetter, Jay C. McConnell and Sidney H. Kahn, not personally but as Claridge Apartments First Mortgage Bondholders' Committee, respectfully represent:

1. That heretofore on the 14th day of May, 1935, an order was entered herein confirming the plan of reorganization, which plan of reorganization provided, among other things, that Claridge Apartments Company, the new corporation organized pursuant thereto, should assume and agree to pay the unpaid reorganization expenses. The approximate amount of such unpaid reorganization expenses is \$13,500.00.

2. That the property described in the plan of reorganization to be conveyed to Claridge Apartments Company pursuant thereto, is subject to delinquent taxes, and approximate amount of which, including estimated taxes for the first half of 1934, is \$13,000.

3. That from the funds available and about to become available from the operation of the property approximately \$8,000 can be applied on account of the payment of the unpaid reorganization expenses and taxes, so that a sum of approximately \$18,500.00 is required for the payment of the balance of the unpaid reorganization expenses and taxes.

4. That a substantial saving can be effected in the interest and penalties due on delinquent taxes if immediate payment were made thereof.

5. That your Petitioners have procured a commitment

for a new first mortgage loan in the amount of \$18,500.00 from Brandy Brothers, the loan to bear interest at the rate of 5% per annum and to mature in 7½ years. There will be no required pre-payments, but Claridge Apartments Company, the new corporation, will have the right to retire all or any part of the loan on any interest payment date. In case of such pre-payment there will be a premium of 2% for the first two years, and thereafter there will be no premium in case of prepayment. The commission or discount to be charged for the making of the loan is to be 1½% plus \$75.00 to cover attorneys' fees of Brandy Brothers. Your Petitioners are of the opinion that the terms of such proposed loan are fair and reasonable, and recommend that the new corporation accept the loan on the terms outlined and that the net proceeds thereof be used for the payment of unpaid reorganization expenses and taxes, including the establishment of reserve for the payment of the first half of the 1934 taxes.

6. That Claridge Building Corporation, the Debtor herein, and Minnie H. Case have approved said loan and the disposition of the net proceeds thereof as aforesaid.

Wherefore, your Petitioners pray that an order be entered herein approving such new first mortgage loan, authorizing the new corporation to execute and deliver a first mortgage to evidence and secure same, and do all things necessary to consummate said loan with Brandy Brothers upon the terms and conditions hereinabove set forth, and to use the net proceeds thereof for the payment of the unpaid reorganization expenses and taxes, including the establishment of reserve for the payment of the first half of the 1934 taxes.

George W. Rossetter,

Jay C. McCord,

Sidney H. Kahn,

Constituting Claridge Apartments
First Mortgage Bondholder
Committee.

By: Jay C. McCord.

State of Illinois, }
County of Cook. } ss.

Jay C. McCord, being first duly sworn on oath, deposes and says that he is a member and the duly authorized agent of the above described committee; that he has read the above and foregoing Petition by him subscribed on behalf of said committee and knows the contents thereof, and that the same is true in substance and in fact.

Jay C. McCord.

Subscribed and sworn to before me this 25th day of July, A. D. 1935.

(Signed) Jennie T. Johnson,

(Seal)

Notary Public.

93 PETITIONER'S EXHIBIT NO. 8.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—56230)

ORDER.

This cause coming on to be heard on the Petition of the Claridge Apartments' First Mortgage Bondholders' Committee for the approval of a new first mortgage loan in the sum of \$18,500.00, an authorization to Claridge Apartments Company, the new corporation organized pursuant to the plan of reorganization, to execute and deliver a first mortgage to evidence and secure said loan and to do all things necessary to consummate said loan and to use the net proceeds thereof for the payment of unpaid reorganization expenses and taxes, including the establishment of a reserve for the payment of the first half of the 1934 taxes; and the Court having examined said Petition and Claridge Building Corporation, the debtor herein, and Minnie H. Case having approved said loan and the disposition of the new proceeds thereof as aforesaid, and being fully advised in the premises,

It is Ordered that the proposed new first mortgage loan for not to exceed \$18,500.00 upon the terms and provisions set forth in the Petition of said Claridge Apartments' First Mortgage Bondholders' Committee this day filed herein be, and the same is, approved.

It is further ordered that Claridge Apartments Company is hereby authorized to execute and deliver a first mortgage to evidence and secure said loan and do all things necessary to consummate said loan with Brandy Brothers, upon the terms and conditions set forth in said Petition, and to use the net proceeds of said loan for the payment of unpaid reorganization expenses and taxes, including the establishment of a reserve for the payment of the first half of the 1934 taxes.

Enter:

William Holly,

Judge.

Order entered July 26, 1935.

PETITIONER'S EXHIBIT NO. 9.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—56230)

REPORT.

Your Petitioners, George W. Rossette, Jay C. McCord and Sidney H. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee, Claridge Building Corporation, the Debtor herein, and Minnie H. Case, pursuant to decrees and orders heretofore entered herein, submit the following report of acts and things done and performed by them in the execution and confirmation of the Plan of Reorganization, as amended, heretofore approved and confirmed herein and the documents executed in connection therewith:

1. Your Petitioners have caused to be organized a new corporation known as Claridge Apartments Company, the certificate of incorporation of which has been heretofore approved, and have caused to be executed and delivered the following documents (the form of each of which documents has heretofore been approved):

(a) Trust Agreement (including form of Trust Certificate);

(b) Management contract between the new corporation and Minnie H. Case;

(c) Surrender Agreement between Melvin L. Straus, as Trustee, and the new Corporation surrendering posses-

sion of the property described in the Plan of Reorganization as amended from said Melvin L. Straus, as Trustee, to the new corporation:

(d) Indemnification Agreement between the new corporation and Melvin L. Straus, as Trustee.

(e) Indemnification Agreement between the new corporation and Claridge Apartments First Mortgage Bondholders' Committee.

2. Claridge Building Corporation have executed, delivered and Recorded quit-claim deeds conveying their interest in the property described in the Plan of Reorganization as amended to the new corporation and Minnie H. Case has executed and delivered a bill of sale conveying her personal property containing in said property to the new corporation.

3. Melvin L. Straus, as Trustee, has filed his Final Report and account herein and has surrendered possession of said property to the new corporation and has or is about to apply the balance of the moneys in his possession derived from the operations of said property on account of the said property, and has delivered to the new corporation the books and records necessary to carry on the management and operation of said property. The stock and trust certificates to be issued pursuant to the Plan of Reorganization as amended and decrees and order heretofore entered herein have been prepared and are about to be issued, in accordance with the Provisions of said Plan of Reorganization as amended and decrees and orders heretofore entered herein.

4. That pursuant to the provisions of the Plan of Reorganization as amended and the Trust Agreement, the persons entitled to receive trust certificates have been notified that at a meeting of the shareholders of the new corporation to be held on September 8, 1925, a vote will be taken on the proposed mortgage in the amount not to exceed \$18,500, the terms and provisions of which have heretofore been approved by the Trust Agreement and that unless one-third or more of those entitled to receive trust certificate advise the Trustees under the Trust Agreement in writing of their objection to and dissent from such proposed mortgage at or prior to said meeting, said Trustees intend to vote in favor of said mortgage. Upon the approval of such proposed mortgage at said Stockholders' meeting, your Petitioners will proceed to cause the execution and delivery of said mortgage.

96 Wherefore Your Petitioners pray that an order may be entered herein, finding that your Petitioners have done and performed all acts and things and executed and delivered all documents required to be done, performed, executed and delivered by them in the execution and confirmation of said Plan of Reorganization as amended, and the decrees and orders heretofore entered herein, and approving and confirming this report.

George W. Rossetter,

Jay C. McCord,

Sidney H. Kahn,

Not personally but as the Claridge Apartments First Mortgage Bondholders' Committee.

By George W. Rossetter,

Claridge Building Corporation,

by George B. Sleigh,

its duly authorized agent

Minnie H. Case,

by George B. Sleigh,

her duly authorized agent.

State of Illinois }
County of Cook } ss:

George W. Rossetter, being first duly sworn, on oath deposes and says he is a member and the duly authorized agent of the Claridge Apartments First Mortgage Bondholders' Committee, the petitioner herein above named; that he has read the above and foregoing Report by him subscribed on behalf of said committee and knows the contents thereof; and that the same is true in substance and in fact.

George W. Rossetter,

Subscribed and Sworn to before me this 12th day of August, 1935.

(Seal)

Natalie H. Lieber,

Notary Public.

97 State of Illinois }
County of Cook } ss.

George B. Sleigh, being first duly sworn on oath, deposes and says that he is the duly authorized agent of Claridge Building Corporation and Minnie H. Case, Petitioners hereinabove named; that he has read the above and foregoing report by him subscribed on behalf of said Claridge Building Corporation and Minnie H. Case and knows the contents thereof; that the same is true in substance and in fact.

George B. Sleigh.

Subscribed and Sworn to before me this 12th day of August, A. D. 1935.

Marion J. Weller,
Notary Public.

(Seal)

98 PETITIONER'S EXHIBIT NO. 10.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—56230)

ORDER.

This cause coming on to be heard on the Report of George W. Rossetter, Jay C. McCord, and Sidney H. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee; Claridge Building Corporation, the debtor herein, and Minnie H. Case, of the Acts and things done and performed by them in the execution and confirmation of the Plan of Reorganization as amended heretofore approved and confirmed herein and the documents executed in connection therewith, this day filed herein pursuant to decrees and orders heretofore entered herein, and the Court having examined said Report, and having heard the statements of counsel and being fully advised in the premises, Doth Find:

That said George Rossetter, Jay C. McCord and Sidney H. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee, Claridge Building Corporation, the Debtor herein, and Minnie H. Case have done and performed all acts and things and executed

and delivered all documents required to be done and performed, executed and delivered by them, in the execution and confirmation of said Plan of Reorganization as amended and the decrees and orders heretofore entered herein.

It is therefore ordered that said Report of George W. Rossetter, Jay C. McCord and Sidney H. Kahn, not personally but as the Claridge Apartments First Mortgage Bondholders' Committee, Claridge Building Corporation, the Debtor herein, and Minnie H. Case this day filed herein, be and the same is hereby approved and confirmed.

Enter:

Philip L. Sullivan,
Judge.

Dated at Chicago,
August 13, 1935.

99 PETITIONER'S EXHIBIT NO. 12.

Walter Hamilton
Attorney and Counselor at Law
29 South LaSalle Street
Chicago, Illinois

Franklin 4849

February 11, 1942.

Mr. D. Altman of Internal Revenue Dept.
1300 Board of Trade Building,
Chicago, Illinois

Claridge Apartments Co. vs. Commission
of Internal Revenue

Dear Mr. Altman:

You will note in the above case that under the plan of Reorganization Bondholders of Claridge Building Corporation had an option to take immediately stock for their bonds in Claridge Apartments Company, the transferee of the property or trust certificates with three trustees holding title to the stock.

Pursuant to this plan the following stock was issued. The first day of issuance of any stock was September 5, 1935.

Certificate Number	Name of Shareholder	Date of Issuance	No. of Shares
1	Walter F. Babin, (bondholder)	9 5 35	10
2	Ida Beckman	" "	30
3	Kathryn Bellers	" "	20
4	Bertha Berggren	" "	5
5	Henry Brill	" "	5
7	Citizens Trust & Savings Bank Administrator,	" "	5
8	John D. Cole	" "	5
9	Mrs. Anna Dickson	" "	10
10	Fletcher Trust Co.	" "	1
11	James Ernest Fox	" "	10
12	Thomas M. George	" "	5
13	Harry P. Hoby	" "	5
14	Rev. Theodore H. Hoefer	" "	10
15	Miss Rita Jackson	" "	5
16	Percy O. Jones	" "	5
17	Roy Herschel Kopp	" "	5
18	Paul Kurz	" "	10
19	Edward B. Long	" "	30
20	Mrs. Mary B. Barkley	" "	10
21	Miss Sarah B. Mauger	" "	10
22	Alfred Freudenthal	" "	5
23	William Evan Powell	" "	10
24	Mrs. Marguerite C. Ross	" "	5
25	Meyer Victor	" "	12
26	George Washington Whipple	" "	5
27	Herbert C. Young	" "	12
28	Charles F. Henry (nominee of shareholder)	" "	8
30	George W. Rosseter et al. (Trustee for Bondholders) (Trustees)	" "	2492
32	Minnie H. Case (Shareholder)	" "	50
33	" " "	" "	50
34	" " "	" "	50
35	" " "	" "	50
36	" " "	" "	50
37	" " "	" "	50

Total 3050

Total not presented and not issued at once 28

Very truly yours,

Form 1120
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Author's name:

Not to be filed with this return
CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN
For Calendar Year 1935

Page 1 of Return
281
SEVEN
SEVEN
1-11111111

For Fiscal Year begin 1935 and ended 1935
PRINT PLAINLY CORPORATION NAME AND BUSINESS ADDRESS
CLERIDGE APARTMENTS COMPANY
ROOM 840 - 310 SOUTH MICHIGAN AVENUE
CHICAGO, ILL. 60604
We warrant, Except Where Otherwise Provided in the Instructions, That This Form is Completely Filled in accordance with the Instructions, Schedule, or Reports Submitted Herewith
Date of Incorporation **MAY 28, 1935**
Under the laws of what State or Country **ILLINOIS**

Title
Last
First
Middle
Suffix
Date of Birth
Sex
Color
Class of Ship
Place of Birth

Is Corporation a Subsidiary of a Corporation? **NO** Located at **310 S. MICHIGAN AVE., CHICAGO, ILL. 60604**
Is Corporation a Foreign Corporation? **NO** Is this a Consolidated Return of Related Corporations? **NO** Is one of these Many Corporations?
Is the Corporation a Personal Holding Company Within the Meaning of Section 562 of the Revenue Act of 1934? **NO** (If so, an additional return on Form 1120-H must be filed.)
Is the Corporation a Foreign Corporation? **NO** (If so, an additional return on Form 1120-F must be filed.)

ATTACH SCHEDULES HERE

GROSS INCOME		Less: Returns and Allowances	Net Income
1 Gross Income (where inventories are an income-determining factor):			
2 Less Cost of Goods Sold:			
(a) Inventory at beginning of year			
(b) Material or merchandise bought for manufacture or sale			
(c) Miscellaneous costs (From Schedule A, Column 1):			
(1) Salaries and wages			
(2) Other costs			
(d) Total of Items (a), (b), and (c)			
(e) Less inventory at end of year			
3 Gross Profit (From Sales) (Item 1 minus Item 2)			
4 Gross Receipts (where inventories are not an income-determining factor):			
5 Less cost of operations (From Schedule A, Column 2):			
(a) Salaries and wages			
(b) Other costs			
(c) Total			
6 Gross Profit (where inventories are not an income-determining factor) (Item 4 minus Item 5)			
7 Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.			
8 Dividends			
9 Royalties			
10 Capital Gain or Loss (From Schedule C)			
11 Interest on Liberty Bonds, etc. (From Schedule D, Column 1)			
12 Dividends on Stock of:			
(a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1934			
(b) Foreign Corporations			
13 Other Income (State source of income) (If separate schedule is required)			
14 TOTAL INCOME (Sum of Items 3, 6, 7, 8, 9, 10, 11, 12, 13)			
DEDUCTIONS			
15 Compensation of Officers (From Schedule E)			
16 Rent on Business Property			
17 Repairs (From Schedule E), (a) Salaries and Wages			
18 Interest			
19 Taxes (From Schedule E)			
20 Losses by Fire, Theft, etc. (From Schedule F)			
21 Bad Debts (From Schedule G), also include determined to be worthless during taxable year (Report on separate sheet)			
22 Dividends (Type of no return)			
23 Depreciation (Resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)			
24 Depletion of Mines, Oil and Gas Wells, Timber, etc. (From Schedule J)			
25 Other Deductions Authorized by Law (State name and so as to appear on: OTHER EXPENSES (SCHEDULE ATTACHED))			
(a) Salaries and wages (Type of no return)			
(b) Stock determined to be worthless during the taxable year			
26 TOTAL DEDUCTIONS (Sum of Items 15 to 25)			
27 NET INCOME (Item 14 minus Item 26)			

COMPUTATION OF TAX

COMPUTATION OF TAX		SINGLE-PAYMENT TAX	
28 Tax on Net Income (From Table 1)		29 Tax on Net Income (From Table 1)	
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1923-24 1929

For the Taxable Year

Name	Amount		Total	
	Assets	Liabilities	Assets	Liabilities
ASSETS				
1. Cash				
(a) Demand deposits, including checks	8 604 17		7 299 37	
(b) Time deposits, including certificates of deposit				
(c) All other cash				
		8 604 17		7 299 37
2. Notes receivable	1 162 70		1 162 70	
3. Accounts receivable	5 925 64		6 272 04	
(a) Less reserve for bad debts	5 982 47	105 89	7 032 47	402 27
4. Inventories				
(a) Raw materials				
(b) Work in process				
(c) Finished goods				
(d) Supplies				
5. Investments (investments)				
(a) Securities of U. S. Govt., Treasury or public utility				
(b) Securities issued under Federal Reserve Act, or				
(c) Securities issued under Federal Reserve Act, or				
(d) Treasury notes, Treasury bills, and Treasury certificates of indebtedness				
(e) Loans to and for U. S. Govt., United States Savings Bonds, and Treasury bonds				
(f) Other securities of the United States				
6. Other investments				
(a) Stocks of domestic corporations				
(b) Bonds of domestic corporations				
(c) Stocks and bonds of foreign corporations				
(d) All other investments or loans				
7. Deferred charges				
(a) Prepaid insurance	821 40		672 48	
(b) Prepaid taxes				
(c) All other	24 45	845 89	777 88	1 450 37
8. Capital assets				
(a) Buildings	162 000 00		162 000 00	
(b) Machinery and equipment				
(c) Furniture and fixtures	4 000 00		4 084 31	
(d) Delivery equipment				
(e) Other depreciable assets				
(f) Total (a) or (b) or (c) or (d) or (e)	166 000 00		166 084 31	
(g) Less reserve for depreciation		166 000 00	2 580 80	163 503 51
(h) Depreciable assets				
(i) Less reserve for depletion				
(j) Land		80 000 00		80 000 00
9. Patents				
10. Good will				
11. Other assets (describe fully)				
RESERVATIONS TO CANADA				
REPAIRS 1928	1 000 00			
		1 000 00		
TOTAL ASSETS			226 555 93	222 655 88
LIABILITIES				
12. Notes payable (less than 1 year)				
13. Accounts payable		2 021 32		1 721 34
14. Bonds and notes (not secured by mortgage)				
15. Mortgage (including bonds and notes secured)				18 500 00
16. Accrued expenses				
(a) Interest			288 62	
(b) Taxes	17 273 63		5 707 56	
(c) All other		17 273 63		5 990 17
17. CAPITAL DELIVERED TO THE GOVERNMENT	188 266 22			
18. ORGANIZATION EXPENSES	18 300 69		200 98	
19. PREPAID RENTS	694 07	206 260 98	513 89	714 87
20. Capital stock				
(a) Preferred stock (less stock in treasury)				
(b) Common stock (less stock in treasury)	1 000 00	1 000 00	31 580 00	31 580 00
21. Surplus			184 149 50	
22. Undivided profits				64 149 50
TOTAL LIABILITIES			226 555 93	222 655 88

1. COST OF SALES (OTHER EXPENSES ARE AN INHERENT DETERMINING FACTOR)

2. COST OF OPERATIONS (WHEN INVENTORIES ARE NOT AN INHERENT DETERMINING FACTOR)

Salaries and wages
Other costsSalaries and wages
Other costs

SCHEDULE B - CAPITAL GAINS AND LOSSES (FROM SALES OR EXCHANGES ONLY) See Instructions 10

1. Description of Property	2. Date Acquired	3. Date Sold	4. Gross Sales Price (If known)	5. Cost	6. Market Value, If Not Sold	7. Capital Gain or Loss	8. Taxable Capital Gain or Loss	9. Taxable Capital Loss
1000								
1001								
1002								
1003								
1004								
1005								
1006								
1007								
1008								
1009								
1010								
1011								
1012								
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1016								
1017								
1018								
1019								
1020								

Gain or Loss (enter net amount in Item 10); capital losses are allowable only to the extent of \$2,000 per taxpayer spouse.

Ready (1) how property was acquired.

(2) whether at time of sale or exchange previously owned more than 50%

In value of your outstanding stock.

Every sale or exchange of stock should be reported in detail, including name and address of corporation, class of stock, number of shares, and date of sale.

No basis (cost, dividends, other nontaxable dividends, stock rights, etc.)

Cost of property must be entered in column 5; if a loss is claimed in column 9.

SCHEDULE C - COMPENSATION OF OFFICERS See Instructions 15

1. Name and Address of Officer	2. Official Title	3. Term Expires in Office	4. Amount of Compensation (If Known)	5. Amount of Compensation (If Not Known)
B. C. HARRIS	PRES. & TREAS. PARTY			
B. HARRIS	V. PRES. & ASST. V.			
B. HARRIS	ASST. V. & ASST. V.			

Note: Schedule C-1 in duplicate also must be filed with this return if compensation in excess of \$15,000 was paid to any officer or employee.

SCHEDULE D - COST OF REPAIRS See Instructions 17

SCHEDULE E - TAXES PAID See Instructions 19

1. Amount (Enter in Item 17)	2. Description of Property	3. Amount (Enter in Item 19)
153.81	PERSONAL PROPERTY	100.47
	FRANCHISE TAX	74.51
	REAL ESTATE	1,736.95

SCHEDULE F - EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. See Instructions 20

1. Date of Property	2. Date Acquired	3. Cost	4. Description of Loss	5. Description of Insurance	6. Amount of Loss	7. Amount of Insurance	8. Amount of Deduction
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RECEIVED

MAR 1 1941

SCHEDULE G - DIVIDENDS See Instructions 21

SCHEDULE H - INCOME FROM DIVIDENDS See Instructions 22

1. Year	2. Name of Corporation	3. Dividend Received	4. Dividend Received
1938	CHICAGO & NORTHWESTERN		
1939			
1940			
1941			
1942			
1943			
1944			
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1946			
1947			
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SCHEDULE I - EXPLANATION OF DEDUCTION FOR DEPRECIATION See Instructions 23

1. Date of Property	2. Date Acquired	3. Cost or Basis	4. Amount of Depreciation	5. Amount of Depreciation	6. Amount of Depreciation	7. Amount of Depreciation	8. Amount of Depreciation
1938	1924	424,000.00	139,253.71	285,355.48	33-1/3	21-1/3	12,738.28
1939	1938	4,000.00		4,000.00	3 yrs.	3 yrs.	555.56

THIS CORPORATION WAS ORGANIZED IN ACCORDANCE WITH A PLAN OF REORGANIZATION APPROVED BY THE DISTRICT COURT OF THE U.S. DISTRICT COURT OF ILLINOIS, EASTERN DISTRICT, UNDER SECTION 77-1 OF THE BANKRUPTCY ACT AS AMENDED. THIS CORPORATION IS BEING TRUSTEED AS A SUCCESSOR ORGANIZATION UNDER SECTION 112 OF THE BANKRUPTCY ACT OF 1934 AND SECTION 112 OF THE BANKRUPTCY ACT OF 1934.

The undersigned, president (or other principal officer and treasurer for instant) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that the return, including the accompanying schedule and statements, has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Power to sign submitted before me this 1st day of March, 1941.

My Commission Expires August 17, 1939.

APPROVED: [Signature] My Commission Expires August 17, 1939.

APPROVED: [Signature] My Commission Expires August 17, 1939.

Under penalty of perjury, I declare that I have prepared this return (or the person named herein) and I am a true, correct, and complete statement of all the information required by the law, and I have not been prepared of which I am aware any knowledge.

Power to sign submitted before me this 1st day of March, 1941.

My Commission Expires August 17, 1939.

APPROVED: [Signature] My Commission Expires August 17, 1939.

APPROVED: [Signature] My Commission Expires August 17, 1939.

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Schedule 1

1935

Claridge Apartments Company

Other Expenses

• Period August 1, 1935 to December 31, 1935

Janitor's Salary	\$ 750.00
Houseman's Salary (Compensation)	400.00
Houseman's Salary (Apartment)	75.00
Housekeeper's & Maid's Salary (Compensation)	398.43
Housekeeper's & Maid's Salary (Apartment)	137.50
Watchman's Salary (Apartment)	160.00
Manager's Salary (Apartment)	200.00
Laundry	194.04
Cleaning Curtains	38.75
Exterminating	35.00
General Supplies	265.00
Miscellaneous (Building Service)	26.75
Electricity	1,067.14
Gas	315.10
Water	155.33
Electrical Supplies	83.42
Fuel	1,023.50
Ash Removal	23.59
Miscellaneous Heat, Light & Power	22.50
Painting & Decorating	456.57
Shades	16.45
Accounting & Auditing	175.00
Legal & Collection	147.25
Advertising	103.45
Telephone	68.92
Agent's Commission	825.51
Trustee's Fees	163.59
Office Salaries	97.50
Mailing Expense, Stockholders, etc.	11.70
Miscellaneous (General)	215.80
Stationery & Supplies	187.45
Insurance	438.23
Mortgage Expense	14.30

\$8,292.77

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Form 707

Duplicate

Treasury Department
Internal Revenue Service
Revised May 1935

First III

(Collection district)

Assessment List, Form 23A

Aug 1935

(Month) (Year)

53981

To be stamped by col-
lector, showing dis-
trict and date received

(Page) (Line)

Examined by:

1935 Return

of

Capital Stock Tax

For year ending June 30, 1935.

Domestic Corporations

(See 701, Revenue Act of 1934, 73d Congress, Public
No. 216)

This return must be filed, in duplicate, with the Collector
of Internal Revenue for your district on or before July 31,
1935; and the tax must be paid on or before that date.

(Stamps) Delinquent D C R Dates Aug 10 1936
Received Jul 1936 Collector of Internal Revenue 1st
Dist. Ill. Received Payment Aug 14 1936 Carter H
Harrison Collector of Internal Revenue 1st Dist. Ill.
Carter H. Harrison Tax Division Audit Section Oct
1936 Audited by HAP

1. Name (Print name of corporation, joint stock com-
pany, or association) Claridge Apartments Cor-
poration
2. Address (The address must be that of the principal
place of business. Give "Street and number",
"City or town", and "State") Room 840 311 S
Michigan Ave., Chicago, Ill.
3. Name of parent company, if any
(District filed)
4. Name of subsidiary, if any (Or attach list and state
number of shares held; also districts where filed)

(District filed

No. shares held

).

5. Nature of business in detail. Owning and Operating an Apartment Building.
6. Incorporated or organized in State of Illinois. Month May Year 1935.
7. Was a capital-stock tax return filed for the preceding taxable year ended June 30, 1934? No. If filed under a different name, state the name (District filed).
8. Date of last income-tax taxable year ended on or prior to June 30, 1935, or, if newly organized corporation having no income tax taxable year ended on or prior to June 30, 1935, date of organization May 28, 1935 (Date of Incorp.).

Corporations making an original declaration of value upon this return must enter the amount of such declared value in item 9. This block is not to be used by a corporation which established its original declared value by the first return for the year ended June 30, 1934.

9. Original Declared Value of Entire Capital Stock as of \$40,000.00

Corporations which have established their original declared value by the return for the year ended June 30, 1934, must adjust such declared value as provided for in Schedule I on page 2 of this return and then enter the amount of the adjusted declared value in Item 10.

10. Adjusted Declared Value of Entire Capital Stock as of

Corporations claiming exemption from the tax must indicate the basis of the claim by a check in the appropriate block under item 11 and must furnish the information specifically requested thereunder.

11. Corporation enumerated in section 191, Revenue Act of 1934. (1) State under which subsection exempt. (2) Furnish information requested under instructions 12.
- Insurance company subject to tax under section 201, 204, or 207, Revenue Act of 1934. State which section

- ☐ Corporation not doing business. (1) Furnish information requested under instructions 14. (2) See instructions 15 with respect to making or adjusting a declaration of value for capital stock.

Computation of Tax	For Use of Taxpayer	For Use of De- partment
12. Original or adjusted declared value as entered in item 9 or 10	\$40,000.00	
13. Tax at rate of \$1 for each full \$1,000 in item 12 (omit cents)	40 x	x
14. Penalty of 25 percent for delinquency in filing return	10	
15. Interest 1% to Sept. 1, 1935. 1% per Month thereafter	2.60	
16. Total tax, penalty, and interest	52.60	

I, the undersigned (Name of president, vice president, or other principal officer) M. C. Kuehn, (Title) President and (Name of treasurer, assistant treasurer, or chief accounting officer) (Title) _____, of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

M. C. Kuehn,
(Corporate Seal) President.

Sworn to and subscribed before me this 30th day of July, 1936.

Elsa Nordson,
(Notarial Seal) Notary Public.

My Commission Expires August 17, 1939.

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TREASURY DEPARTMENT

Internal Revenue Service
Chicago, Ill.

(Stamps) Received Subsection D Feb 19 1941 Files
Section Records Division Feb. 17, 1941.

Office of

Internal Revenue Agent in Charge

Chicago Division

105 West Adams Street

ITC:JCR

Commissioner of Internal Revenue,
Washington, D. C.

Attention: IT:Rec:F:D:EBL

In re: Claridge Apartments Company,

310 South Michigan Avenue,

Chicago, Illinois.

Year: 1935

Reference is made to your letter dated February 11, 1941, requesting that the return of the above named taxpayer for the year 1935 be forwarded for photostat. Accordingly, the return, Form 1120, Serial No. 864084 is enclosed herewith. It will be appreciated if said return is transmitted to this office after it has served its purpose.

E. C. Wright,

Internal Revenue Agent in Charge.

pmr

107

Duplicate

Form 872

Treasury Department

Internal Revenue Service

(Revised Sept. 1939)

Consent Fixing Period of Limitation Upon Assessment of
Income and Profits Tax

(Stamp). Received Mar 27 1940 Int. Rev. Agent in
Charge Chicago, Illinois.

March 26, 1940.

In pursuance of the provisions of existing Internal Revenue Laws Claridge Apartments Company, a taxpayer (or

taxpayers) of Chicago, Illinois, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year (or years) ended December 31, 1935, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1941, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayer) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

Claridge Apartments Company,

(Seal)

By Walter Hamilton,

Taxpayer

Secretary

Guy T. Helvering,

Commissioner of Internal Revenue.

By E. C. W. Mar. 28, 1940.

(Date)

1. This consent may be executed by the taxpayers' attorney or agent provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return of A Husband And Wife was filed, this consent must be signed by both spouses unless the one spouse acting under a power of attorney, signs as agent for the other.

2. If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolutions passed by the board of directors giving the officer authority to sign the consent.

108 Memorandum Justifying the Acceptance of Consent Extending the Statute of Limitations

Chicago, Illinois,
March 28, 1939.

Internal Revenue Agent in Charge,
Chicago, Illinois.

In re: Claridge Apartments Company,
29 S. La Salle St., Room 840,
Chicago, Illinois.

Taxable Year Ended December 31, 1935.

Attached is a signed consent, Form 872, extending the statute of limitations until June 30, 1941, executed by the above-named taxpayer for the calendar year ended December 31, 1935.

A completed income and excess profits tax return, Form 1120, was filed on March 16, 1936, in the 1st District of Illinois at Chicago, Illinois, which is on file in this Division. The corporation is still active.

The consent is accepted in order to give the taxpayer an opportunity for a hearing before the local office of the Chicago Division of the Technical Staff.

Carl C. Thomas,
Carl C. Thomas,
Conferree.

CCT:SLB

109

Duplicate

Form 872,
Treasury Department
Internal Revenue Service
(Revised Nov. 1938)

ET:R:D 5
FKW

Consent Fixing Period of Limitation Upon Assessment of
Income and Profits Tax

(Stamps) Received Mar 2 1939 Audit Division D.
Original to Central Waiver File Mar 8 1939.

February 28, 1939

In pursuance of the provisions of existing Internal Revenue Laws Claridge Apartments Company, a taxpayer

(or taxpayers) of Chicago, Illinois, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year (or years) ended December 31, 1935, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1940, except that, if a notice of deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

Claridge Apartments Company,

Taxpayer.

By Walter Hamilton,

Secretary.

(Seal)

Guy T. Helvering,

Commissioner of Internal Revenue.

By E. A. C. 3 8 39.

(Date)

FKW EDS-3

1. This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return of A Husband And Wife was filed, this consent must be signed by both spouses unless the one spouse, acting under a power of attorney, signs as agent for the other.

2. If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolutions passed by the board of directors giving the officer authority to sign the consent.

Page 2 of Return

11110019

Date of Incorporation **MAY 20, 1938**

Under the laws of what State or country?

The corporation's books are in care of **SECURITIES SERVICE CORP.**

310 S. MICHIGAN AVE.,

Kind of business (in detail) **OFFICES & OPERATIONS IN**

CHICAGO, ILL.

APARTMENT BUILDINGSIs this a consolidated return for affiliated corporations? **NO**

If how many corporations?

If this is not a consolidated income tax return of railroad corporations, did the corporation at any time during the taxable year own

20 percent or more of the voting stock of another corporation or corporations? **NO**

If so, attach separate schedule showing

with respect to each corporation: (1) name and address of corporation, (2) percentage of stock owned, (3) date stock was acquired, and (4) the collector's office in which the corporation's income tax return for the taxable year was filed.

Is the corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1936? **NO**

an additional return on Form 1120H must be filed.)

Did the corporation make a return of information on Forms 1096 and 1099 for Instruction in Form 1040 for calendar year 1938? **NO**

NET INCOME COMPUTATION

GROSS INCOME

1. Gross Sales (where inventories are an income-determining factor): \$
2. Less Cost of Goods Sold:
- (a) Inventory at beginning of year
- (b) Material or merchandise bought for manufacture or sale
- (c) Manufacturing costs (from Schedule A, Column 1):
- (1) Salaries and wages, \$
- (2) Other costs, \$
- (d) Total of lines (a), (b), and (c)
- (e) Less inventory at end of year
3. Gross Profit from Sales (Item 1 minus Item 2)
4. Gross Receipts (where inventories are not an income-determining factor): \$ **43,607.28**
5. Less cost of operations (from Schedule A, Column 2):
- (a) Salaries and wages, \$ **192.93**
- (b) Other costs, \$ **17,981.32**
- Total **23,174.25**
6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5) **20,433.03**
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.
8. Interest on Government obligations, etc. (from Schedule M, Lines 4, 5, 6, and 7)
9. Rents
10. Royalties
11. Capital Gain or Loss (if an Schedule B, if loss, enter with minus sign)
12. Dividends—Stock of:
- (a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1936
- (b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1936
- (c) Foreign Corporations
13. Other Income (State nature of income) (Use separate schedule, if necessary)

14. Total Income in Items 3 and 6 to 13 inclusive **20,433.03**

DEDUCTIONS

15. Compensation of Officers (from Schedule C)
16. Rent on Business Property
17. Repairs (from Schedule E): (a) Salaries and Wages, \$
- (b) Other Costs, \$
- Total **1,336.02**
18. Bad Debts (from Schedule F), also amounts determined to be worthless during the taxable year (attach on separate sheet) **375.00**
19. Interest Paid (from Schedule G) **925.00**
20. Taxes Paid (from Schedule H) (Do not include Federal Income Taxes Reported in Item 28 below) **4,817.33**
21. Contributions or Gifts (from Schedule I)
22. Loans by Fire, Storm, etc. (from Schedule J)
23. Depreciation (resulting from exhaustion, wear, and tear in case of depreciable assets) (from Schedule K) **14,071.48**
24. Depletion of Mines, Oil, and Gas Wells, Timber, etc. (Attach explanation on separate sheet)
25. Other Deductions Authorized by Law (explain below or on separate sheet):
- (a) Salaries and wages (Not included in Items 2, 3, 15 or 17 above)
- (b) Amount determined to be worthless during the taxable year
- (c)
26. Total Deductions in Items 15 to 25 inclusive **21,524.83**
27. Net Income for Federal Income Tax Computation (Item 14 minus Item 26) **1,091.20**
28. Less Federal Income Tax (from Form 1120) **1,091.20**
29. Net Income for Federal Income Tax Computation (Item 27 minus Item 28) **0.00**

SCHEDULE A (See Instructions 2 and 5)

1. COST OF SALES (WHICH IS NECESSARY) IS AN INCOME-DETERMINING FACTOR

... OF THE ABOVE-REPRODUCED DOCUMENTS ARE NOT AN INCOME DETERMINING FACTOR

Business and wages
Other cities.

Area and weight
(mm^2 and mg)

SEE SCHEDULE 1

SCHEDULE D—CAPITAL GAINS AND LOSSES (FROM SALES OR EXCHANGES ONLY) (See instructions.)

[illegible]

State or Local (enter net amount on Form 11, page 3; if net amount is a loss, enter that amount or \$2,000, whichever is less)

Note (1): No property was acquired.

(2) whether at time of sale or exchange purchaser owned more than 50%

Is value of your outstanding stock

Every sale or exchange of stock should be reported in detail, including name and address of corporation; class of stock; number of shares; capital charge; selling price (less dividends, other distributable dividends, stock rights, etc.)

Cost of property must be entered in column 8 if a loss is claimed in column 9

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 18)

BIRMINGHAM CONSERVATION OF WATER		22. DED. OF PRICE (OWNED)		3. MONTHLY RENT	
1. NAME AND ADDRESS OF OWNER		2. DEDUCTIBLE	3. TAX DEDUCTIBLE	4. RENT	5. RENT
Mr. C. H. HUGHES	1000 1/2	PAID - TAXES	PAID		NO RENT
Mr. HUGHES	1000 1/2	PAID - SUBV.	PAID		
Mr. HUGHES	1000 1/2	ADVT. SUBV.	PAID		

Form: Schedule O-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of \$15,000 was paid for any officer or employee.

SCHEDULE D—INCOME FROM DIVIDENDS (See Instruction 1.)

Should have all dividends received during the year, stating the amount and the name and address of the corporation which declared the dividend

SCHEDULE B-COST OF REPAIRS (See Instruction 17)

1. APPROX (Date of Exam) 17 June 68

SCHEDULE F-BAD DENTS (See Instruction 18)

1. Year	2. New Issues	3. Issues Reaff. Issues	4. Rep. Issues
1982	5	5	5
1983			0
1984			
1985	8/1 TO 12/31	17 461 78	None
1986		43 820 86	378 00

SCHEDULE C—INTEREST PAID (See Instructions 19)

1. Agency (Name and location) page 1

928 00

SCHEDULE H—TAXES PAID (See instruction 20)

1. Name of Tax	2. To Whom Paid	3. Amount (Paid or Accrued)	4. Amount (Paid or Accrued)
REAL ESTATE	ADDRESS	14 399 0	
PERSONAL CAPITAL STOCK TAX	SECRETARY OF STATE OF ILL.	238 0	
FRANCHISE TAX	COOK COUNTY COLLECTOR	95 1	
PERSONAL PROPERTY	ADDRESS	14 9	
INSURANCE PREMIUMS - 1936		73 2	
		94 878 3	

4.7 Deportables List
(State of Texas)
page 2

GENERAL 1 - OTHER COM TO

	Assets	Liabilities	Equity
1. Cash	7,299.37		4,306.99
(a) Demand deposits, including checks			
(b) Time deposits, including certificates of deposit			
(c) All other cash			
2. Notes receivable	1,162.78		1,162.78
3. Accounts receivable	6,273.04		6,060.49
(a) Less reserve for bad debts	7,032.49	402.27	6,630.22
4. Investments			
(a) Raw materials			
(b) Work in process			
(c) Finished goods			
(d) Supplies			
5. Investments (continuable)			
(a) Obligations of a State, Territory, or Federal subdivision thereof, or the District of Columbia, or United States possessions			
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			
(c) Liberty 3 1/2% Bonds and other obligations of United States issued on or before September 1, 1917			
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			
(e) Liberty 4% and 4 1/2% Bonds, United States Savings Bonds, and Treasury Bonds			
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in line (b) above)			
6. Other investments			
(a) Stocks of domestic corporations			
(b) Bonds of domestic corporations			
(c) Stocks and bonds of foreign corporations			
(d) All other investments or loans			
7. Deferred charges	672.48		1,888.13
(a) Prepaid insurance			
(b) Prepaid taxes	777.80	1,480.37	2,714.55
(c) Other			
8. Capital assets	162,000.00		162,000.00
(a) Buildings			
(b) Machinery and equipment			
(c) Furniture and fixtures	4,084.37		3,987.39
(d) Delivery equipment			
(e) Other depreciable assets			
(f) Total of Lines (a) to (e)	166,084.37	163,503.87	165,907.39
(g) Less reserves for depreciation	2,880.50		8,778.70
(h) Depreciable assets			
(i) Less reserves for depletion		50,000.00	
(j) Land			50,000.00
9. Patents			
10. Good will			
11. Other assets (describe fully)			
12. Total Assets	222,655.88		215,916.02
LIABILITIES			
13. Notes payable (less than 1 year)		1,721.34	491.62
14. Accounts payable			
15. Bonds and notes (not secured by mortgage)		18,500.00	18,500.00
16. Mortgages (including bonds and notes not secured)			
17. Accrued expenses	282.62		282.62
(a) Interest	5,707.58		7,162.17
(b) Taxes		5,990.17	111.15
(c) All other			
18. Other liabilities (describe fully)	200.98		
UNPAID DEPRECIATION EXP. PREPAID RENTS	513.89	714.87	678.78
19. Capital stock			
(a) Preferred stock (less stock in treasury)	31,580.00	31,580.00	31,580.00
(b) Common stock (less stock in treasury)	164,149.50		157,109.71
20. Surplus		164,149.50	157,109.71
21. Undivided profits			
22. Total Liabilities		222,655.88	215,916.02

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Schedule 1

Claridge Apartments Company

Other Costs—(Schedule A—Column 2)

Laundry	\$ 509.34
Cleaning Curtains	165.17
Exterminating	84.00
General Supplies	572.80
Electricity	3,271.33
Gas	937.32
Water	515.10
Electrical Supplies	187.70
Fuel	2,533.73
Ash Removal	112.37
Miscellaneous—Heat, Light & Power	6.00
Painting and Decorating	3,324.87
Shades and Shade Cleaning	73.09
Accounting and Auditing	873.72
Advertising	220.26
Telephone	155.06
Agent's Commission	2,133.07
Trustees' Fees	423.09
Depository Fees, Mailing Notices, Exp., etc.	480.15
Miscellaneous—General	183.98
Stationery and Supplies	41.50
Legal	186.74
Insurance	944.13
Mortgage Expense	46.80

\$17,981.32

117 Form 1120—Schedule N
Treasury Department
Internal Revenue Service

Analysis of Dividends Paid and Receipts and Expenditures
on Account of Changes in Corporation's Obligations and
Capital Stock.

For Calendar Year 1936

Or fiscal year began ³⁰ , 1936, and ended
1937.

(Date received)

This schedule, together with
green copy marked "Dupli-
cate" must be filed with and
as part of the corporation in-
come and excess-profits tax re-
turn for the taxable year.

Print plainly corporation's name and business address—

Claridge Apartments Company
(Name)

Room 840, 310 S. Michigan Avenue
(Street and number)

Chicago Cook Illinois
(Post office) (County) (State)

List below all dividends paid during the taxable year,
stating in each case the character of the dividend, and
entering the amounts in the proper columns respecting the
taxable status of the dividends. If the total amount shown
below differs from that reported in Schedule M, item 17,
explain the difference at the end of this schedule. Divi-
dends paid in treasury stock should be entered in item 20
and not in items 5 through 8. It is essential that dividends
in which the medium of payment is elected by the share-
holders be carefully reported in item 9, and correspond-
ingly excluded from items 1 through 8.

Respondent's Exhibit B.

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Item No.	Character of Dividend	Taxable Dividends (1)	Nontaxable Dividends (2)	Total (3)
1	Cash	\$11,234.70	\$3,385.80	\$14,620.50
2	Treasury stock			
3	Assets other than money or the corporation's own securities. (Explain character of each payment; use separate schedule if necessary.)			
4	Obligations of the corporation (bonds, notes, scrip, etc.)			
5	Common stock of the corporation to holders of preferred* stock			
6	Preferred* stock of the corporation to holders of preferred* stock			
7	Preferred* stock of the corporation to holders of common stock			
8	Common stock of the corporation to holders of common stock			
9	Optional—Medium of payment elected by the shareholders. (List below separately the amounts disbursed in each medium of payment): Cash Common stock Other (specify character)			
10	Total (items 1 to 9)	\$11,234.70	\$3,385.80	\$14,620.50
11	Dividends paid credit (item 29, page 1, of return)			
12	Dividend carry-over (item 10 minus item 11)	11,234.70		

* Preferred stock for this purpose should be considered as stock which is preferred as to either dividends or assets irrespective of formal designation.

251, DUPLICATE—Page 2

Form 107
CAPITAL STOCK TAX
INTERNAL REVENUE SERVICE
REVISED 1935

1936 RETURN

OF
CAPITAL STOCK TAX
For Year Ending June 30, 1936

DOMESTIC CORPORATIONS

(See Reg. Revenue Act of 1935, 48th Cong., Public No. 407)
This return must be filed, in triplicate, with the collector of Internal Revenue for your district on or before July 31, 1936, and the tax must be paid on or before that date.

To be stamped by collector, showing district and date received.

RECEIVED
DISTRICT OFFICE
JUL 1 1936
JUL 1 1936
JUL 1 1936

- Name **Cluridge Apartments Company**
(Print name of corporation, joint stock company, or association)
- Address **Room 840 - 310 S. Michigan Ave. Chicago, Ill.**
(The address must be that of the principal place of business, if the corporation is organized in the United States)
- Name of parent company, if any
- Name of subsidiary, if any **No shares held**
(If more than one, attach list and state number of shares held by parent, subsidiary or each)
- Nature of business in detail **Owning and Operating an Apartment Building**
Incorporated or organized in State of **Illinois** Month **May**
- Was a capital stock tax return filed for the preceding taxable year ended June 30, 1935? **Yes**
a. state the value

ADDITIONAL SECTION
If filed under a different name
District filed

- DECLARED VALUE OF ENTIRE CAPITAL STOCK
(The value declared must be the fair value and complete. A value must be declared in every case regardless of whether a corporation has been exempted from the tax by section 101 or 102.)
- EXEMPTIONS.—The Act provides for an exemption from the tax only on the grounds indicated below. Corporations claiming exemption must (1) declare a value for the capital stock under item 8, (2) check the appropriate block under item 9 showing the ground for the claim, and (3) submit with the return a full statement of the evidence supporting the claim under the block checked.
☐ Corporation exempt from income tax under section 101, Revenue Act of 1934. (1) State under which exempted under section 101.
(2) Furnish information required by subsection 4.
☐ Insurance company subject to tax under section 201, 204, & 207, Revenue Act of 1934. State which section.
☐ Corporation not doing business. (1) Furnish information required by subsection 6. (2) Declare value of capital stock in item 8 above.

10. Declared value (must be identical figure entered in item 8)	\$ 200 000 00
11. Tax at rate of \$1.40 for each full \$1,000 in item 8	280 00
12. Penalty for delinquency in filing return (see item 7)	
13. Interest at 6 percent per annum beginning August 1, 1935	200 00
14. Total tax, penalty, and interest	480 00
15. State amounts of outstanding capital stock and surplus as of date of the close of income tax taxable year used in declaring value for capital stock. (If nonstock organization, so indicate and attach statement of net worth.)	

	Amount or Shares	Par (State) Value Per Share	Total
Capital stock: Preferred			None
Common	3,072	No Par	31,560.00
Capital or paid-in surplus			135,000.00
Surplus reserves			None
Surplus and undivided profits			9,483.33

I, **M. C. Kuhn**, the undersigned, (Name of president, vice president, or other corporate officer)
and (Name of treasurer, assistant treasurer, or chief accounting officer)
return, made, being severally duly sworn, each for himself deponent and avers that this return, including any accompanying statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1935 and the Regulations issued thereunder.

Return transmitted and subscribed before me this **24th** day of **July**, 1936.
M. C. Kuhn President
Volney Fisher Secretary
Clerk of Court
Clerk of Court
118 12 9

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Chicago, Illinois
January 20, 1940

Internal Revenue Agent in Charge,
Chicago, Illinois.

In re: Claridge Apartments Company
#937—29 S. La Salle Street
Chicago, Illinois

Year Ended: December 31, 1936

Attached hereto is consent, Form 872, executed on behalf of the above named corporation, which extends the period during which income and profits tax for the year ended December 31, 1936 may be assessed, to June 30, 1941.

The taxpayer corporation, which is still in existence, has requested that the consent be accepted in order that there may be sufficient time within which to give its case thorough consideration.

The original return, which is in my possession, was filed on March 15, 1937.

For the reasons given by the taxpayer, it is recommended that the consent be accepted.

Reuben Agranowsky,
Internal Revenue Agent.

120

Duplicate

Form 872

Treasury Department
Internal Revenue Service
(Revised Sept. 1939)

Consent Fixing Period of Limitation Upon Assessment of
Income and Profits Tax

(Stamp) Received Jan 24 1940 Int. Rev. Agent in
Charge Chicago, Illinois.

January 20, 1940.

In pursuance of the provisions of existing Internal Revenue Laws Claridge Apartments Company, a taxpayer (or taxpayers) of #937—29 S. La Salle St., Chicago, Illinois, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess profits, or war-

profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year (or years) ended December 31, 1936, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1941, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment, and for sixty days thereafter.

Claridge Apartments Company,

Taxpayer.

By: Walter Hamilton,

Secretary.

(Seal)

Guy T. Helvering,

Commissioner of Internal Revenue.

By F. J. H. Jan. 24, 1940.

(Date)

1. This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return Of A Husband And Wife was filed, this consent must be signed by both spouses unless the one spouse, acting under a power of attorney, signs as agent for the other.

2. If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolutions passed by the board of directors, giving the officer authority to sign the consent.

1937

UNITED STATES

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN

1937

Treasury Department (FORM 1120) Internal Revenue Service

For Calendar Year 1937 or Fiscal Year

beginning 1937, and ended 1938

PRINT PLAINLY CORPORATOR'S NAME AND ADDRESS

CLARIDGE APARTMENTS COMPANY

Room #937 - 29 S. La Salle Street

Chicago

Cook

Illinois

Kind of business Own and Operate Apartment Building

EXCESS-PROFITS TAX COMPUTATION

- Items 1-6
- Net income for excess-profits computation (Item 28, Schedule A)
 - State value of capital stock as declared in your capital stock tax return for the year ended June 30, 1937 (or in your capital stock tax return for the year ended June 30, 1938, if your income tax fiscal year begins in 1937 and ended on or after July 31, 1938)
 - Enter here 10 percent of item 2
 - Dividends received credit (80 percent of Schedule F, column 2)
 - Balance subject to excess-profits tax (Item 1 minus items 3 and 4)
 - Amount taxable at 8 percent (8 percent of item 5, but not more than item 5)
 - Balance taxable at 12 percent (Item 5 minus item 6)
 - Total excess-profits tax

3262 36

NORMAL TAX COMPUTATION

- Items 7-16
- Net income for normal tax computation (Item 31, Schedule A)
 - Dividends received credit (80 percent of Schedule F, column 2)
 - Dividends paid credit (for mutual investment companies)
 - Balance subject to normal tax (Item 9 minus item 10 or 11)
 - Tax on portion of item 13 not in excess of \$2,000
 - Tax on portion of item 13 in excess of \$2,000 and not in excess of \$15,000
 - Tax on portion of item 13 in excess of \$15,000 and not in excess of \$40,000
 - Tax on portion of item 13 in excess of \$40,000
 - Total normal tax in items 12 to 16
 - Normal Tax on Corporations Not Subject to Graduated Normal Tax Rates (to be used in lieu of the normal tax rates above)
 - Stocks and trust companies (see Instruction 11)
 - Insurance companies
 - Corporations entitled to the benefits of section 201 of the Revenue Act of 1938
 - Corporations organized under the China Trade Act, 1922
 - Foreign corporations engaged in trade or business within the United States or having an office or place of business therein

3262 36

UNDISTRIBUTED PROFITS TAX COMPUTATION
(See Instruction 11 regarding corporations exempt from this tax)

- Items 17-26
- Net income for undistributed profits tax computation (Item 31, Schedule A)
 - Normal tax (Item 17 above)
 - Credit for holding company affiliate or national mortgage association (see Instruction 11) (b) and (c)
 - Adjusted net income (Item 23 minus items 24 and 25)
 - Dividends paid credit (Item 12, Schedule M)
 - Credit for contracts restricting dividend payments (see Instruction 11)
 - Undistributed net income (Item 26 minus items 27 and 28)
 - Portion of item 29 taxable at 7%, \$5,000 or 10% of item 26, whichever is greater (but not more than item 29)
 - Portion of item 29 taxable at 12%, 10% of item 26 (but not more than item 29 minus item 20)
 - Portion of item 29 taxable at 17%, 20% of item 26 (but not more than item 29 minus items 20 and 21)
 - Portion of item 29 taxable at 22%, 30% of item 26 (but not more than item 29 minus items 20 to 22)
 - Portion of item 29 taxable at 27% (item 29 minus items 20 to 23)
 - Total surtax in items 20 to 24
 - Total normal tax and surtax (item 17 plus item 25, or item 19, 20, 21, or 22)
 - Less: Credit for income tax of a foreign country or a possession of a foreign country (see Instruction 11)
 - Balance of tax (Item 26 minus item 27)
 - Excess-profits tax (Item 8 above)
 - Total tax due (item 26 plus item 29)

3262 36

102568

Schedule A—NET INCOME COMPUTATION

- GROSS INCOME**
- Item and Instruction No.
- Gross sales (where inventories are an income-determining factor)
 - Less cost of goods sold (from Schedule D, 1)
 - Gross profit from sales (from 1 minus item 2)
 - Gross receipts (where inventories are not an income-determining factor)
 - Less cost of operations (from Schedule D, 2) (See Schedule)
 - Gross profit where inventories are not an income-determining factor (from 4 minus 5)
 - Interest on loans, notes, mortgages, bonds, bank deposits, etc.
 - Interest on obligations of the United States (from Schedule B, line 19 (a))
 - Rents
 - Royalties
 - Capital gain (or loss) (from Schedule E) (If a net loss, do not enter over \$2,000)
 - Dividends (from Schedule F)
 - Other income (state nature of income)
 - Total income in items 3, and 6 to 13, inclusive

46244 34
28812 38

17432 06

- DEDUCTIONS**
- Compensation of officers (from Schedule G)
 - Salaries and wages (not deducted elsewhere)
 - Rent
 - Repairs
 - Bad debts (from Schedule H)
 - Interest
 - Taxes (from Schedule I) (Do not include Federal income-profits tax)
 - Contributions or gifts (from Schedule J)
 - Losses by fire, storm, etc. (Submit schedule, see Instruction 23)
 - Depreciation (from Schedule M)
 - Depletion of mines, oil and gas wells, timber, etc. (Submit schedule, see Instruction 23)
 - Other deductions authorized by law (from Schedule L)
 - Total deductions in items 15 to 20, inclusive
 - Net income for excess-profits tax computation (Item 14 minus Item 27)
 - Less: Federal income-profits tax (see Instruction 29)
 - Interest on obligations of the United States (Item 8, above)
 - Net income for income tax computation (Item 20 minus Items 28 and 30)

125 00
1059 37
5468 04

14040 81

20694 82
3262 36

3262 36

Schedule B—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

- Total distributions to stockholders charged to current surplus during the taxable year
- Contributions or gifts (excess over 5 percent limitation)
- Federal income taxes
- Income taxes of United States possessions or foreign countries if claimed as a credit in whole or in part in item 27, page 1 of return
- Federal taxes paid on tax-free government bonds
- Special improvement taxes leading to increase the value of the property assessed
- Employees' reserves and capital expenditures charged to expense on the books
- Insurance premiums paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary
- Unallowable interest incurred in purchasing or carrying exempt interest obligations
- Excess of capital loss, if any, over amount allowable as a deduction in item 11, Schedule A
- Additions to surplus reserves (for each reserve separately)
 -
 -
 -
 -
- Other unallowable deductions
 -
 -
 -
 -
- Adjustments for tax purposes not recorded on books (list item)
 -
 -
 -
 -
- Bondy debits to current surplus (list item)
 - 1936 Operating Expenses
 -
 -
 -
- Earned surplus and undivided profits as shown by balance sheet at close of the taxable year (Schedule N)
- Total of items 1 to 15

2924 10

815 33

2685 78
6425 21

- Earned surplus and undivided profits as shown by balance sheet at close of preceding taxable year (Schedule N)
- Net income for income tax computation (Item 21, Schedule A)
- Non-taxable and partially exempt income
 - Interest on:
 - Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions
 - Obligations of United States issued on or before September 1, 1917, Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness
 - United States Savings Bonds and Treasury Bonds owned in the principal amount of \$5,000 or less
 - United States Savings Bonds and Treasury Bonds owned in the principal amount of over \$5,000
 - Obligations of instrumentalities of the United States
 - Other non-taxable income (list item)
 -
 -
 -
 -
- Charges against surplus reserves deductible from income in the return (list item)
 -
 -
 -
 -
- Adjustments for tax purposes not recorded on books (list item)
 -
 -
 -
 -
- Bondy credits to earned surplus (list item)
 - Additional Depreciation
 - Allowable
 -
 -
- Total of items 17 to 22

1809 89
3262 36

7578 28

5425 21

NOTE.—Attach to this return and mark as Schedule B-1, B-2, etc., analyses of surplus reserves, if any, as shown by the balance sheets (Schedule M), additions to which are not deductible for income and excess-profits tax purposes.

Schedule D-1.—COST OF GOODS SOLD (See Instruction 2)Subtable D-2 — COST OF OPERATION**Schedule E.—CAPITAL GAINS AND LOSSES** * (From Sales or Exchanges; Only) (See Instruction 11)

Total Gain (or Loss) (enter as item 11). **Net Profit:** \$ _____ **Net Loss:** \$ _____

12. Whether at time of sale or exchange (a) purchase of owned domestic and foreign stock (other than stock in a partnership, estate, or trust) where purchaser was a corporation, more than 50 percent in value of the capital stock and 50 percent in value of gross capital stock was owned directly or indirectly by or for the same individual or his family; and (b) where purchaser was a corporation, whether more than 50 percent in value of the capital stock was owned directly or indirectly by you.

If an estate name and address is required, fill in:

Schedule F — INCOME FROM DIVIDENDS

* Amounts directly received from corporations reported under the "Other Income" and "Other Expenses" items of the Schedule of Income of the corporation are reported in column 4.

Schedule C.—COMPENSATION OF OFFICERS (See instruction 10)

Total Consumption of Offshore Center on item 15. Actual 100

See Schedule G-1 (N-10-F) 10-1-98 also see for details on the time period of the study and the number of subjects who were given a second or third study.

Schedule H - BAD DEBTS (See instruction 19)

66	66	375 00
66	66	125 00

Schedule I.—TAXES (See instruction 21)

Real Estate 4997 44
 Capital Stock 185 00
 Franchise 93 44
 Personal Property 50 00
 Social Security 142 76
 5468 64

Total (Enter as item 21, Schedule 4)

Schedule J.—CONTRIBUTIONS OR GIFTS (See instruction 22)

Total (Enter as item 22, Schedule 4, subject to 5 percent limitation per instruction 22)

Schedule K.—DEPRECIATION (See instruction 23)

Furniture & Fixtures 1935 3907 59

Brick Building 1924 424609 19

1893 70 8015 89 3 Yrs. 7/10

164730 27 259874 98 3315 21 1/2 Yrs.

This corporation was organized in accordance with a plan of reorganization approved by Federal Court Under Section 77-B proceedings. This plan is being treated as a corporate reorganization under Section 13 of the Internal Revenue Act of 1934, and basis used for depreciation is that of predecessor corporation.

Total (Enter as item 24, Schedule 4)

Schedule L.—OTHER DEDUCTIONS (See instruction 25)

Schedule M.—DISTRIBUTIONS TO STOCKHOLDERS AND DIVIDENDS PAID CREDIT (See instruction 26)

(Enter the amount of Dividends or Profits of the Taxable Year or Out of Earnings or Profits Accumulated Since February 28, 1913, (Indicate Date 1913.)

1. Cash
2. Assets other than cash or the corporation's own securities (See notes 1 and 5. Indicate nature of assets.)
3. Treasury stock (See notes 1 and 5.)
4. Obligations of the corporation (bonds, notes, scrip, etc.) (See notes 3 and 5.)
5. Common stock of the corporation distributed to holders of common stock (See notes 3 and 5.)
6. Preferred stock of the corporation distributed to holders of common stock (See notes 2, 4, and 5.)
7. Common stock of the corporation distributed to holders of preferred stock (See notes 2, 4, and 5.)
8. Preferred stock of the corporation distributed to holders of preferred stock (See notes 2, 4, and 5.)
9. Optional—Medium of payment elected by stockholders:
 - (a) Cash
 - (b) Common stock (See notes 3 and 5.)
 - (c) Other (See note 5.) (Specify nature)
10. Totals of items 1 to 9

DIVIDENDS PAID CREDIT

11. Taxable distributions (line 10, column 1)
12. Dividend carry-over from preceding taxable year (attach schedule of computation)
13. Dividends paid credit (Totals of lines 11 and 12) (Enter as item 27, page 1)
14. Adjusted net income (line 26, page 1)
15. Dividend carry-over (line 13 minus line 14)

RECONCILIATION

16. Total distributions out of earnings or profits of the taxable year or out of earnings or profits accumulated since February 28, 1913 (Total of columns 1 and 2, line 10)
17. Total distributions charged to earned surplus and undivided profits, as shown on line 1, Schedule B
18. Total distributions during the taxable year regardless of source

If the amounts entered on lines 16, 17, and 18 are not the same, explain difference.

Notes:

1. Enter the lesser of the two following amounts determined as of time of distribution: (a) The adjusted basis to the holder of the corporation as provided in section 113 of the Revenue Act of 1936, as amended; or (b) the fair market value.
2. Enter the amount of the fair market value at time of distribution.
3. Enter the lesser of the two following amounts determined as of the time of distribution: (a) Fair value; or (b) fair market value.
4. Enter the amount of the fair market value at time of distribution.
5. Preferred stock for this purpose should be considered as stock which is preferred as to either dividends or assets, irrespective of federal disqualification.
6. Distributions in the form of notes to purchase assets or otherwise to stock or other obligations of the corporation should be entered in the "Other" column.

Schedule N - BALANCE SHEETS (See Instruction N)

Page 2

		Beginning of Taxable Year		End of Taxable Year	
		Amount	Total	Amount	Total
ASSETS					
1 Cash		3162 70	4306 99	1162 70	5516 69
2 Notes receivable		6060 49		2626 14	
3 Accounts receivable		7223 19		9828 88	
(a) Total of lines 2 and 3		6845 73	377 46	6970 73	2878 11
(b) Less reserve for bad debts					
4 Inventories					
(a) Raw materials					
(b) Work in process					
(c) Finished goods					
(d) Supplies					
5 Investments (Government obligations)					
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions					
(b) Obligations of the United States					
(c) Obligations of instrumentalities of the United States					
6 Other investments					
(a) Stocks of domestic corporations					
(b) Bonds of domestic corporations					
(c) Stocks and bonds of foreign corporations					
(d) Treasury stock					
(e) All other investments or loans					
7 Deferred charges			4102 68		1608 44
(a) Prepaid insurance, taxes, etc.					
8 Capital assets					
(a) Buildings		162000 00		162000 00	
(b) Machinery and equipment					
(c) Furniture and fixtures		3907 59		3907 59	
(d) Delivery equipment					
(e) Other depreciable assets					
(f) Total of lines (a) to (e)		165907 59		165907 59	
(g) Less reserve for depreciation		8778 70	157128 89	14941 23	150966 36
(h) Depreciable assets					
(i) Less reserve for depletion			50000 00		50000 00
(j) Land					
9 Other assets (Transfer below)					
Total Assets			215916 02		211969 60

LIABILITIES AND CAPITAL					
11 Accounts payable			491 62		300 00
12 Bonds, notes, and mortgages payable (with original maturity of less than 1 year)					
13 Bonds, notes, and mortgages payable (with original maturity of 1 year or more)			18500 00		18500 00
14 Accrued expenses					
(a) Interest		282 62		282 62	
(b) Taxes		7162 17		6335 84	
(c) All others		111 15	7555 94	836 34	7454 80
15 Other liabilities (Transfer below)					
Prepaid Rents		678 75	678 75		1036 00
16 Surplus reserve (Transfer below)					
Telephone Slugs					25 00
17 Capital stock					
(a) Preferred stock		31580 00	31580 00	31580 00	31580 00
(b) Common stock			155300 42		152388 02
18 Paid-in or capital surplus			1809 89		2685 78
19 Retained surplus and undivided profits					213969 60
Total Liabilities and Capital			215916 02		211969 60

Schedule O - CHANGES IN CORPORATION'S OBLIGATIONS AND CAPITAL STOCK (See Instruction O)

1 Total cash receipts during taxable year from sale of corporation's non-interest-bearing obligations with original maturity of 1 year or more and capital stock

2 Total cash expenditures during taxable year for purchase or retirement of corporation's own interest-bearing obligations with original maturity of 1 year or more and capital stock

3 Difference between lines 1 and 2

* Preferred stock for this purpose should be considered as stock which is preferred as to either dividends or assets, irrespective of formal designation

MANUFACTURING

Landings made, three, all good, net

MEMPHIS, TENN., (UPI) —

to the extent that the Commission is not satisfied with the information provided, it may request further information from the applicant.

MANUFACTURING

Trends

REYNOLDS & REYNOLDS ATTORNEYS AT LAW

5252

QUESTIONS

- May 28, 1935
- 1 Date of incorporation. **Illinois**
- 2 State or country.
- 3 Name, address and office where your returns for the preceding year was filed. **Chicago, Illinois**
- 4 Is the corporation a bank as in case of C. Henry.
Located at **Room #937 - 29 S. La Salle St.**
- 5 Is the corporation a personal holding company within the meaning of section 361 of the Revenue Act of 1936, as amended by the Revenue Act of 1937? **No** If so, an additional return on Form 1120H should be filed **No**
- 6 Is this a consolidated return of railroad corporations? **No** If so, procure from the collector of internal revenue for your district Form 811-A, Affiliations Schedule, which shall be filed in, sworn to, and filed as a part of this return.
- 7 If this is not a consolidated return of railroad corporations, and (a) you owned at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign or (b) any corporation, individual, partnership, trust or association, owned at any time during the taxable year 50 percent or more of your voting stock, attach separate schedule showing with respect to each: (1) name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed.
- 8 Was the income of this corporation included in a consolidated return for any prior year? **No** If so, give name and address of corporation which filed the consolidated return and the last year for which such return was filed.

- Claridge Building Corporation
August 1, 1935

"If however is "yes", closing balance sheets of old business and opening balance sheets of new business must be furnished, unless furnished heretofore.

10. Is this return made on the basis of cash receipts and disbursements?
☒ No If not, describe fully what other basis is used in computing net income.

Accrual Basis of Accounting

- State whether the expenditures at the beginning and end of the taxable year were valued at cost, or mark or market, whichever is lower. If other basis is used, specify why used, and the date inventory was last reconciled with stock.
- None**
12. Did the corporation make a return of information on Form 990 in 1997 (see instruction 1) for the calendar year 1997? **Yes**

AFFIDAVIT (See Instructions F)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself depose and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1908, as amended, and the Revenue Acts of 1936 and 1937, and the regulations issued thereunder.

Subscribed and sworn to before me this

27 day of *June* 1933

At other Hamilton voting places

(If this return was prepared by some person or persons other than officers or employees of the corporation, the following affidavit must be executed)

AFFIDAVIT (See Instruction F)

I (we) swear (or affirm) that I (we) prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information regarding the income tax and/or excess profit tax liability of the person for whom this return has been prepared of which I (we) have any knowledge.

Subscribed and sworn to before me this

day of Monday 193

Many small plants the

RECEIVED
DEC 20 1939
NY DIV. AGENT IN CHARGE
CHICAGO, ILLINOIS

127

Claridge Apartments Company
Room #937—29 S. La Salle Street
Chicago, Illinois

Schedule A—Item #5—Cost of Operations

Management Commission	\$ 2767.37
Salaries	4734.16
Laundry & Curtain Cleaning	546.26
Ash Removal & Exterminating	192.75
General Supplies	669.43
Electric Current	3514.00
Gas	974.95
Water	624.49
Electric Supplies	208.26
Fuel	2703.98
Painting & Decorating	4789.41
Repairs and Maintenance	1819.37
Shades & Cleaning	170.68
Advertising	134.71
Telephone	142.48
Stationery & Supplies	128.38
Furniture Rental	934.33
Miscellaneous	315.14
Insurance	915.46
Legal & Collection	726.52
Trustee's Fees	204.34
Depository Fees, expenses, etc.	421.69
Accounting & Auditing	1078.17
Mortgage Expense	95.85
Total	<u>\$28812.18</u>

The schedules on this page must be filled in by every corporation making adjustments to an original declared value for the capital stock established by the return for the year ended June 30, 1935. See instructions 5 to 9, inclusive.

SCHEDULE I. ADJUSTMENT OF ORIGINAL DECLARED VALUE OF ENTIRE CAPITAL STOCK FOR ALL TRANSACTIONS DURING THE INCOME-TAX TAXABLE YEAR ENDED December 31, 1935

Original declared value as established by the first return for the taxable year ended June 30, 1935

\$ 200,000.00

Additions

- (1) Total cash paid in for stock or shares (see instruction 7, item 1)
- (2) Fair market value of all property received for stock or shares (see instruction 7, item 1)
- (3) Paid-in surplus and contributions to capital (see instruction 7, item 2)
- (4) Net income (see instruction 7, item 3)
- (5) Excess of income wholly exempt from tax over amount disallowed as deductions by section 21 (a) (1) of the Revenue Act of 1934 or 1936 (see instruction 7, item 4)
- (6) Deductions allowable for income tax purposes (see instruction 7, item 5)

Total additions

TOTAL BEFORE DEDUCTIONS

\$ 200,000.00

Deductions

- (A) (1) Total cash distributed in liquidation to shareholder (see instruction 7, item A)
- (2) Fair market value of all property distributed in liquidation to shareholders (see instruction 7, item A)
- (B) Distributions of earnings or profits (see instruction 7, item B)
- (C) Excess of deductions allowable over gross income (see instruction 7, item C)

11,234.70

1,091.80

Total deductions

12,326.50

ADJUSTED DECLARED VALUE (see instruction 10, page 1)

\$ 187,673.50

SCHEDULE II. ANALYSIS OF CHANGES IN CAPITAL STOCK AND SURPLUS

Capital Stock and Surplus at beginning of year

- 1 Capital stock Preferred 31,680.00
- 2 Common 158,684.24
- 3 Capital or paid-in surplus
- 4 Surplus reserves
- 5 Surplus and undivided profits 5,665.26

Additions - Capital transactions

- 6 Total cash and fair market value of property paid in for stock or shares (detached items 1(a) and 1(b), Schedule I)*
- 7 Paid-in surplus and contributions to capital (item 2, Schedule I)*
- 8 Other additions (to be detached)
- 9 adjustment of reorganization expenses 200.00

Additions - Revenue transactions

- 10 Net income (item 4, Schedule I)
- 11 Income wholly exempt from income tax (This total less the amount referred as item 12 of this schedule should correspond with item 4, Schedule I) (see instruction 7, item 4)
- 12 The amount of the disallowed deduction allowable for income tax purposes (item 5, Schedule I) (see instruction 7, item 5)
- 13 Other additions (to be detached)

Additional depreciation claimed

7,676.38

Additional repairs claimed

1,081.04

Total

\$ 186,489.80

Deductions - Capital transactions

- 12 Liquidating distributions (total of items A(1) and A(2), Schedule I)* 3,388.00
- 13 Other distributions (item B, Schedule I)* 11,234.70
- 14 Excess of amount of distributions in liquidation over gross income
- 15 Other deductions (to be detached)

Deductions - Revenue transactions

- 16 Excess of deductions allowable over gross income and claimed on income tax return (item C, Schedule I) 1,091.80
- 17 Deductions disallowed by sec. 24 (a) (8), 1934 or 1936 Act (see item 2 of this schedule)
- 18 Other deductions (to be detached)
- 19 Involuntary tax penalties 20.79
- 20 Prior years taxes 740.03
- 21 Prior years overrating expenses 84.57
- 22 1935 Federal Capital Stock Tax 442.60

Capital Stock and Surplus at end of year

- 23 Capital stock Preferred 31,680.00
- 24 Common 158,684.24
- 25 Capital or paid-in surplus
- 26 Surplus reserves
- 27 Surplus and undivided profits 1,007.29

Total

\$ 208,489.80

*Enter values shown by the books if different from values obtained in Schedule I and explain difference.

1938 UNITED STATES CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN 1938

For corporations having total receipts of not more than \$500,000 and a net income of not more than \$25,000, as determined by the instructions to this form.

Owner's Name

For Calendar Year 1938

or Fiscal Year beginning 1938, and ending 1939

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

No. 276
City 420125
State

CLARIDGE APARTMENTS COMPANY

29 South La Salle Street - Room 937

Chicago

Cook

Illinois

Kind of business Own and Operate Apartment Building

ADJUSTED NET INCOME COMPUTATION

Item No.	Amount	Less returns and allowances	Amount
1. Gross sales (where inventories are an income-determining factor)			
2. Less cost of goods sold (from Schedule B-1)			
3. Gross profit from sales (Item 1 minus Item 2)			
4. Gross receipts (where inventories are not an income-determining factor)	46537 87		
5. Less cost of operations (from Schedule B-2)	24311 22		
6. Gross profit where inventories are not an income-determining factor (Item 4 minus Item 5)			22103 65
7. Interest on loans, notes, mortgages, bonds, bank deposits, etc. (See Instruction 15-11)			
8. Interest on obligations of the United States (from Schedule A, line 19 (a) (4)). (See Instruction 15-12)			
9. Dividends (See Instruction 15)			
10. Royalties (See Instruction 20)			
11. (a) Capital gains (or loss) (from Schedule C). If a net loss, do not enter over \$2,000.			
(b) Gain or loss from sale or exchange of property other than capital assets (from Schedule D)			
12. Dividends (from Schedule E)			
13. Other income (state nature of income)			
14. Total income in Items 6, and 8 to 13, inclusive			22103 65
DEDUCTIONS			
15. Compensation of officers (from Schedule F)			
16. Salaries and wages (not deducted elsewhere)			
17. Rent (See Instruction 23)			
18. Repairs (See Instruction 24)			
19. Bad debts (from Schedule G)			
20. Interest (See Instruction 25)			
21. Taxes (from Schedule H). Do not include Federal income profits tax.			
22. Contributions or gifts paid (from Schedule I)			
23. Losses by fire, storm, shipwreck, or other casualty or theft. (Subject schedule see Instruction 26)			
24. Depreciation (from Schedule J)			
25. Depletion of mines, oil and gas wells, timber, etc. (Subject schedule see Instruction 21)			
26. Other deductions authorized by law (from Schedule K)			
27. Total deductions in Items 15 to 26, inclusive			19128 58
28. Net income for excess-profits tax computation (Item 14 minus Item 27)			2904 11
29. Less Federal income profits tax (See Instruction 33)			
30. Net income (Item 28 minus Item 29)			2904 11
31. Less Interest on obligations of the United States (Item 8, above)			
32. Adjusted net income (Item 30 minus Item 31)			2904 11

EXCESS-PROFITS TAX COMPUTATION (See Instruction 36)

Item No.	Amount	Rate	Amount
33. Net income for excess-profits tax computation (Item 30, above)	2904 11		
34. Value of capital assets as determined in your capital assets tax return for the year ended June 30, 1938, or for year ended June 30, 1939, if your income tax fiscal year begins in 1939 and ended on or after July 31, 1939	100000 00		
35. 10 percent of Item 34	10000 00		
36. Dividends received credit (60 percent of net income of Item 33, but not in excess of 50 percent of Item 35, above)			
37. Balance subject to excess-profits tax (Item 33 minus total of Items 34 and 35)	10000 00		
38. Amount taxable at 6 percent (15 percent of Item 34, but not more than Item 37, and tax		6%	
39. Balance taxable at 12 percent (Item 37 minus Item 38, net 11, and tax		12%	
40. Total excess-profits tax (total of Items 38, net 11, and Item 39, net 11)			

INCOME TAX COMPUTATION

Item No.	Amount	Rate	Amount
41. A taxable net income (Item 32, above)	2904 11		
42. Dividends received credit (60% of net income of Item 33, but not in excess of 50% of Item 41, above)			
43. Balance subject to income tax (Item 41 minus Item 42)			
44. Portion of Item 43 not in excess of \$5,000, and tax at 12% percent		12%	
45. Portion of Item 43 in excess of \$5,000 and not in excess of \$25,000, and tax at 14%		14%	
46. Portion of Item 43 in excess of \$25,000, and tax at 16% percent		16%	
47. Total income tax (total tax in net 11 of Items 44, 45, and 46)			363 01
48. Less Credit for income taxes paid from foreign country or U. S. possession (allowable deduction only) (See Instruction 38)			
49. Net income tax (Item 47 minus Item 48)			363 01
50. Excess-profits tax (Item 40, above)			363 01
51. Total tax due (Item 49 plus Item 50)			726 02



Schedule A.—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

1. Total distributions to stockholders charged to earned surplus during the taxable year.		18. Adjusted net income (item 32, page 1).	2885 78
2. Contributions or gifts (income over 3 percent limitation).		19. Excess and partially exempt income:	2904 11
3. Federal income taxes.	363 02	(a) Exempt on:	
4. Income taxes of United States possessions or foreign countries if claimed as a credit in whole or in part in item 4b, page 1.		(1) Obligations of a State, Territory, or political subdivision thereof of the United States or possessions.	
5. Federal loans paid on tax-free covenant bonds.		(2) Obligations of United States issued on or before September 1, 1917, Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness.	
6. Special improvement taxes tending to increase the value of the property assessed.		(3) United States Savings Bonds and Treasury Bonds issued in the principal amount of \$5,000 or less.	
7. Replacements, repairs, and capital expenditures charged to expense on the books.		(4) United States Savings Bonds and Treasury Bonds issued in the principal amount of over \$5,000.	
8. Insurance premiums paid on the life of any officer or employee whose the corporation is directly or indirectly a beneficiary.		(5) Obligations of instrumentalities of the United States.	
9. Unallowable interest incurred in purchasing or carrying exempt interest obligations.		(6) Other tax-exempt income (specify):	
10. Excess of capital loss, if any, over amount allowable as a deduction in item 11 (a), page 1.		(1)	
11. Additions to surplus reserves (list each reserve separately):		(2)	
(a)		20. Charges against surplus reserves deducted from income in the return (specify):	
(b)		(a)	
(c)		(b)	
12. Other nondeductible deductions:		21. Adjustments for tax purposes not recorded on books (specify):	
(a)		(a) Overestimated 1937:	
13. Adjustments for tax purposes not recorded on books (specify):		(b) Personal Property	11 23
(a)		(c) Real Estate Tax	414 76
(b)		(d) Capital Stock Tax	135 00
14. Ready credits to earned surplus (specify):		22. Ready credits to earned surplus (specify):	
(a) Additional Workmen's Compensation Insurance		(a) Additional Depreciation	7678 28
(b) ANRS - 1937	5 78	(b) allowable	
15. Earned surplus and undivided profits as shown by balance sheet at close of the taxable year (Schedule M).	11660 30	(c)	
16. Total of items 1 to 15.	14029 10	23. Total of items 17 to 22.	14029 10

Schedule B-1.—COST OF GOODS SOLD. (See Instruction 17)
(When Schedule B is on basis of inventory method)

1. Inventory at beginning of year.	
2. Material or merchandise bought for manufacture or sale.	
3. Salaries and wages.	
4. Other costs per books. (Attach detailed schedule).	
5. Total (Items 1 to 4).	
6. Loss inventory at end of year.	
7. Cost of goods sold (specify as item 8, page 1).	

Schedule B-2.—COST OF OPERATIONS
(When Schedule B is on basis of inventory method)

1. Salaries and wages.	
2. Other costs (to be detailed):	
(a)	
(b)	
(c)	
(d)	
3. Total (enter as item 8, page 1).	

Schedule C.—CAPITAL GAINS AND LOSSES. (See Instruction 21)

1. Description of Property	2. Date Acquired	3. Gross Sales Price (Reduced price)	4. Cost or Other Basis	5. Expense of Sale and Cost of Improvement (Indicate in column 3 of March 1, 1941)	6. Depreciation Allowed for Allowable Basis (Indicate in column 4 of March 1, 1941)	7. Gain or Loss (Indicate whether gain or loss in column 5 and 6)
Total Gain (or Loss) (Enter as item 11 (a), page 1, but if entered as a loss, do not enter over \$2,000)						

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 21)

1. Description of Property	2. Date Acquired	3. Gross Sales Price (Reduced price)	4. Cost or Other Basis	5. Expense of Sale and Cost of Improvement (Indicate in column 3 of March 1, 1941)	6. Depreciation Allowed for Allowable Basis (Indicate in column 4 of March 1, 1941)	7. Gain or Loss (Indicate whether gain or loss in column 5 and 6)
Total Gain (or Loss) (Enter as item 11 (b), page 1)						

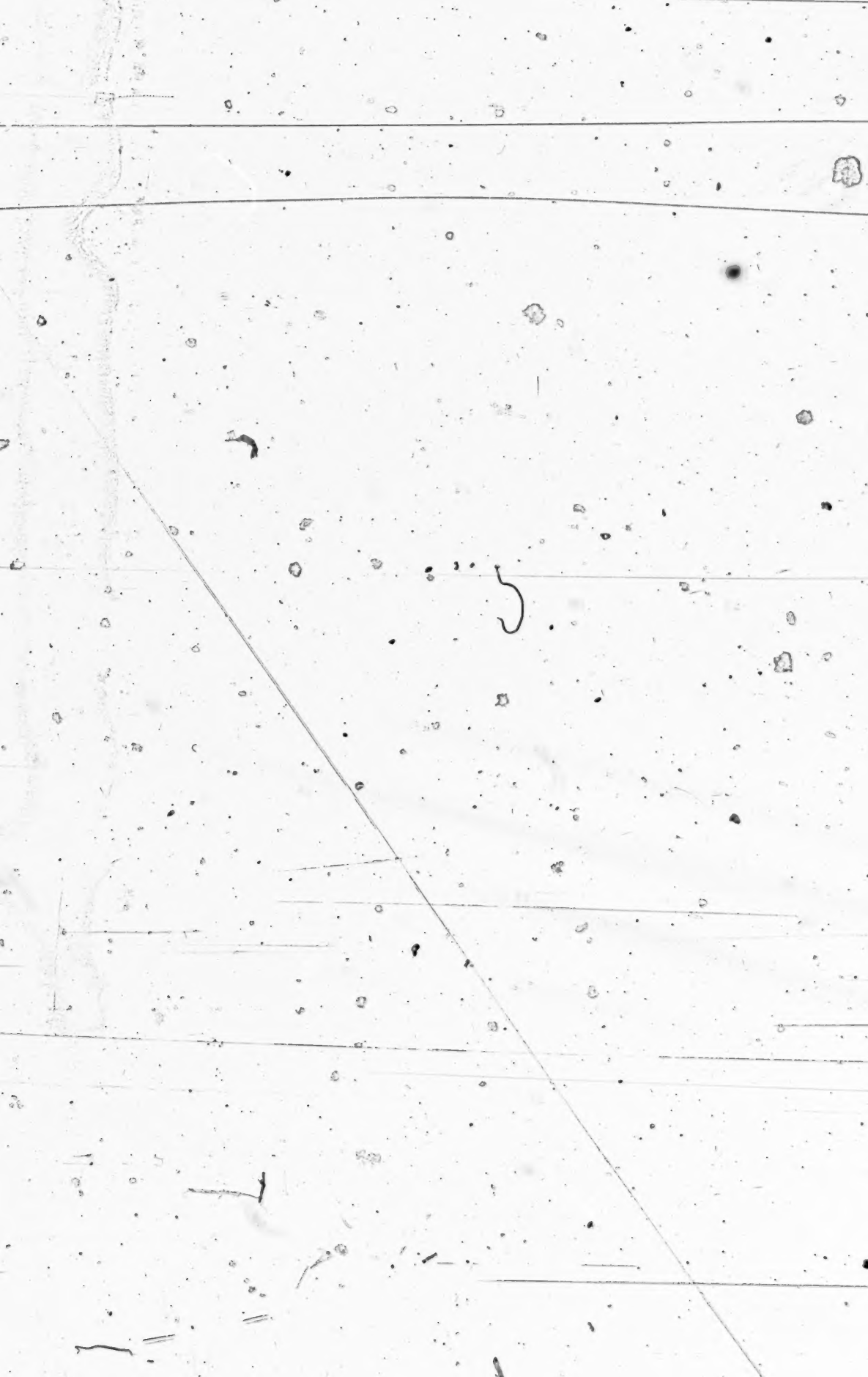
Supplemental information required for Schedules C and D

State with respect to each item of property reported in Schedules C and D: (1) how property was acquired; (2) whether at time of sale or exchange: (a) purchaser owned directly or indirectly more than 50 percent in value of its capital stock was owned directly or indirectly by or for the seller, individual or his family, and (c) where purchaser was a corporation, whether more than 50 percent in value of its capital stock was owned directly or indirectly by you. If an estate name and address of purchaser.

Schedule E.—INCOME FROM DIVIDENDS

1. Name and address of Paying Corporation	2. Character of Income (Specify Code 1, 2, or 3)	3. Foreign Corporations	4. Other Corporations
Total (Enter as item 13, page 1)			

State whether or not the corporation reported under the Code 1, 2, or 3, and corporation subject to the benefits of section 801 of the Revenue Act of 1938, which is hereby stated to be subject to section 1.



Schedule F—COMPENSATION OF OFFICERS (See instruction 27)

1. Name and Address of Officer	2. Official Title	3. Year (Month- To-From)	4. Compensation for Services		5. Amount of Compensation
			A. Cash	B. Non-Cash	

Total Compensation of Officers (Enter as item 18, page 1)

Note.—Schedule F-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of \$75,000 was paid to any officer or employee.

Schedule G—BAD DEBTS (See instruction 25) (See note 1)

1. Taxable Year	2. Not Earlier Reported	3. Date as a result	4. Bad Debt Charged Off by Corporation (See instruction 25)	5. Corporate Credit as a result	6. Amount of Deduction
1934					
1935					
1936	Loss		43,820 66		375 00
1937	Loss		46,244 85		125 00
1938 (See note 1)	\$2904.11		46,517 87		400 72

1. Check whether deduction claimed represents worthless debt charged off or is in addition to reserve.

2. In addition to the data required above, corporations claiming deductions on other than a reserve basis must submit the information specified in instruction 25.

3. Not including securities which are capital assets, and which are to be worthless and charged off within the taxable year, which should be reported in Schedule C.

Schedule H—TAXES (See instruction 27)

1. Name	2. Amount	3. Name and address of Corporation	4. Amount
Real Estate	906 72		
Capital Stock	100 00		
Franchise	46 47		
Personal Property	34 17		
Social Security Tax	194 82		
Sales Tax	10 92		
Total (Enter as item 21, page 1)	5,297 70		

Schedule I—CONTRIBUTIONS OR GIFTS PAID (See instruction 28)

1. Name	2. Amount	3. Name and address of Corporation	4. Amount
Real Estate	906 72		
Capital Stock	100 00		
Franchise	46 47		
Personal Property	34 17		
Social Security Tax	194 82		
Sales Tax	10 92		
Total (Enter as item 21, page 1, subject to 3 percent limitation) (See instruction 28)	5,297 70		

Schedule J—DEPRECIATION (See instruction 29)

1. Kind of Property (See instruction 29)	2. Date Acquired	3. Cost or Other Basis	4. Accumulated Depreciation	5. Depreciation for the Year	6. Remaining Depreciation	7. Life in Years	8. Life in Months	9. Life in Days	10. Life in Hours
Brick Building	1924	\$24609 19		27468 55	247140 64	33 1/2	402	10734 28	
Furniture-Fixtures	1935	3907 59	711 26	3196 23	4519 64	8	96	2304 00	
Refrigeration	1934	6519 84							
Total (Enter as item 24, page 1)									

This corporation was organized in accordance with a plan of reorganization approved by Federal Court under Section 771 of the Revenue Act 1934 and treated as a corporate reorganization under Section 112 of Revenue Act 1934 and basis used for depreciation is that of predecessor corporation.

Schedule L—DISTRIBUTIONS TO STOCKHOLDERS

1. Name	2. Amount	3. Name and address of Corporation	4. Amount
Cash			
Assets other than cash or the corporation's own securities (See notes 1 and 2.) (Indicate nature of assets)			
Treasury stock (See notes 1 and 2)			
Dividends of the corporation (Stock, cash, etc.) (See notes 3 and 4)			
Common stock of the corporation distributed to holders of common stock (See notes 5 and 6)			
Preferred stock of the corporation distributed to holders of common stock (See notes 5, 6, and 7)			
Common stock of the corporation distributed to holders of preferred stock (See notes 5, 6, and 8)			
Preferred stock of the corporation distributed to holders of preferred stock (See notes 5, 6, and 9)			
Options—Medium of payment of stockholders (See notes 10 and 11)			
(a) Cash			
(b) Common stock (See notes 5 and 6)			
(c) Other (See note 11) (Specify nature)			
Total of items 1 to 9			

1. Enter the name of the two following amounts determined as of time of distribution: (a) The adjusted basis in the hands of the corporation as provided in section 112 of the Revenue Act of 1934, or (b) the fair market value.

2. Enter the amount of the fair market value at time of distribution.

3. Enter the name of the two following amounts determined as of time of distribution: (a) Face value, or (b) fair market value.

4. Preferred stock for this purpose should be considered as stock which is preferred as to other dividends or assets, irrespective of formal designation.

5. Distribution in the form of rights to purchase stock or securities of the corporation should be entered in the same column as the stock, bonds, or other obligations for which rights were distributed.

ASSETS					
1. Cash		8416 69		8416 69	
2. Notes and accounts receivable		300 02		300 02	
Less reserve for bad debts		7931 06		7931 06	
3. Inventories					
(a) Raw materials					
(b) Work in process					
(c) Finished goods					
(d) Supplies					
4. Investments (Government obligations)					
(a) Obligations of a State, Territory, the political subdivisions thereof, or the District of Columbia or United States possessions					
(b) Obligations of the United States					
(c) Obligations of instrumentalities of the United States					
5. Other investments (Receivables)					
6. Capital assets					
(a) Depreciable assets (Reserve) Building	162000 00		162000 00		
Furniture and fixtures	3907 59		3907 59		
Refrigerators	165907 59		165907 59		
Total depreciable assets	165907 59		165907 59		
Less reserve for depreciation	14941 23		14941 23		
(b) Depreciable assets					
Less reserve for depletion					
(c) Land		50000 00		50000 00	
7. Other assets (Reserve)		1608 44		1608 44	
Deferred Charges					
8. Total Assets		213 69 60		213 69 60	
LIABILITIES					
9. Accounts payable		300 00		300 00	
10. Bonds, notes, and mortgages payable					
(a) With original maturity of less than 1 year					
(b) With original maturity of 1 year or more		18500 00		18500 00	
11. Accrued expenses (Reserve)		282 62		282 62	
Interest		6135 84		6135 84	
Taxes		836 31		836 31	
Others		7458 80		7458 80	
12. Prepaid Rent		1036 00		1036 00	
13. Surplus reserves (Reserve)		25 00		25 00	
Telephone charges					
14. Capital stock					
(a) Preferred stock		31580 00		31580 00	
(b) Common stock		152388 02		152388 02	
15. Paid-in or capital surplus		2685 78		2685 78	
16. Earned surplus and undivided profits		213969 60		213969 60	
17. Total Liabilities		213 69 60		213 69 60	

QUESTIONS

1. Business classification (See instruction 16) Own and operate apartment building
2. If engaged in more than one of the business classifications indicated in instruction 16, state on the two lines above the two businesses accounting for the greater part of the total receipts, and the approximate percentage accounted for by each of the two businesses. If engaged in other trades, also indicate the number of items as of the end of the taxable year
3. Date of incorporation May 28, 1935
4. State or country
5. Principal office where your return for the preceding year was filed Chicago, Illinois
6. The corporation's books are in care of C. Henry
7. Located at 29 S. La Salle St. - Room 937
8. Is the corporation a personal holding company within the meaning of section 602 of the Revenue Act of 1936? No If so, an additional return on Form 1120-B must be filed
9. Is this a consolidated return of railroad corporations? No If so, return from the collector of internal revenue for your district on Form 991, Affiliations Schedule, which shall be filed in, sworn to, and filed as a part of the return
10. If this is not a consolidated return of railroad corporations, did you: (a) own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign or (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of your voting stock? No If the answer is "yes," attach separate schedule showing with respect to each: (1) Name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed
11. Was the income of this corporation included in a consolidated return for any prior year? No If so, give name and address of corporation which filed the consolidated return and the last year for which such return was filed

which such return was filed

Was the corporation in any way an outgrowth, result, reorganization, or reorganization of a business or businesses in existence during the year of any prior year since December 31, 1917? Yes If answer is "yes," give name and address of each predecessor business and the date of the change in entity

Claridge Building Corporation

August 1, 1935

Upon each change, were any asset values determined? If answer is "yes," attach balance sheets of all predecessor and succeeding business entities of new business must be furnished; otherwise, furnish full details

12. Is the return made on the basis of cash receipts and disbursements? No If not, describe fully what other basis or method was used in computing net income Accrual basis

of accounting

13. State whether the income for the taxable year and the end of the taxable year were valued at cost, or cost or market, or otherwise

fully state why cost, and the date in which the return was filed with stock

None

JAN 11 1940

14. Did the corporation make a return of income for the year 1935 and 1936 on Form 1000 as instructed in (1) for the taxable year 1935 and 1936?

15. Did the corporation at any time during the taxable year 1935 or 1936, or in any other year, have a foreign corporation, partnership, trust, or association in which it owned or controlled 50 percent or more of the total voting power?

If answer is "yes," attach separate schedule showing with respect to each: (1) Name and address; (2) percentage of stock owned; (3) date stock was acquired; and (4) the collector's office in which the income tax return of such corporation, individual, partnership, trust, or association for the last taxable year was filed

AFFIDAVIT (See instruction 7)

We, the undersigned, president (or vice president, or other principal officer, and treasurer or assistant treasurer) of the corporation for which this return is made, being severally duly sworn, each for himself, depose and say that this return, including all accompanying schedules and statements, has been examined by him and as to the truth of his knowledge and belief a true, correct and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1936 and the Regulations issued thereunder.

Subscribed and sworn to before me this 1st day of Feb 1937

Signature of officer administering oath

Signature of officer administering oath

Signature of officer administering oath

Signature of officer administering oath

AFFIDAVIT (See instruction 7)

I, the undersigned, declare that I have prepared this return for the taxable year stated, and that the return, including all accompanying schedules and statements, is a true, correct and complete statement of all the information required by the law and the Regulations issued thereunder, and that I have not prepared or caused to be prepared any other return for the taxable year stated, or any other return, which is in violation of the law and the Regulations issued thereunder.

Subscribed and sworn to before me this 1st day of Feb 1937

Signature of officer administering oath

Signature of officer administering oath

Signature of officer administering oath

Signature of officer administering oath

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Claridge Apartments Company
29 South La Salle Street—Room 937
Chicago, Illinois

Schedule A—Item #5 Cost of Operations

Management Commission	\$ 2297.69
Property Management Fee	1200.00
Salaries	4259.77
Laundry & Curtain Cleaning	740.16
Ash Removal and Exterminating	195.00
General Supplies	52.61
Electric Current	3023.39
Gas	863.72
Water	443.24
Electric Light Bulbs	243.52
Fuel	2648.87
Painting & Decorating	3122.28
Repairs & Maintenance	2108.34
Shades & Cleaning	81.12
Advertising	347.37
Telephone	244.02
Stationery & Supplies	222.30
Miscellaneous	204.30
Insurance	1081.12
Legal & Auditing	625.62
Furniture & Equipment Repairs & Maintenance	132.89
Kitchen Utensils	15.80
Linens	236.09
Tax Services	25.00
Total	<u>\$24414.22</u>

1938 RETURN

CAPITAL-STOCK TAX

For Year Ending June 30, 1938

DOMESTIC CORPORATIONS

FIRST

ILLINOIS

Assessment Last, Fourth 22A

AUG

Month

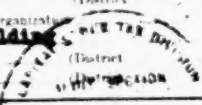
42 1/2

Pay

This return must be filed, in triplicate, and received with remittance by the collector for your district on or before July 31, 1938. (See instruction 7, page 8.)

To be stamped when by collector, showing district and date received

- 1 Name **CLARIDGE APARTMENTS COMPANY**
- 2 Address **Room 937 - 29 South La Salle Street Chicago, Illinois**
- 3 Incorporated or organized in State of **Illinois** Month **May** Day **28** Year **1935**
- 4 Was a 1937 capital stock tax return filed? **Yes** Name under which filed, if different, attach statement explaining fully
- 5 Date of close of last income-tax year ended prior to July 1, 1938 **December 31, 1937** Was an income tax return filed for that year? **Yes** Name under which filed
- 6 Nature of business in detail **Buying and Operating an Apartment Building**
- 7 Name of parent company, if any
- 8 Name of subsidiary, if any



DECLARED VALUE OF ENTIRE CAPITAL STOCK \$ 100,000.00

- 10 EXEMPTIONS. The Act provides for exemption from the tax only on the grounds indicated below. Corporation must (1) declare a value for the capital stock under item 9, (2) check the appropriate box, (3) attach in support of the basis of the claim, and (4) submit with the return a full statement of the evidence specified under the plan checked.
- ☐ Corporation exempt from income tax under section 101, Revenue Act of 1938. (1) State under which subsection of section 101
- ☐ Insurance company subject to tax under section 201, 204, or 207, Revenue Act of 1938. State which section
- ☐ Corporation not doing business. (1) Furnish information required by instruction 6. (2) Declare value of capital stock in item 9 above

COMPUTATION OF TAX	PAID IN BY TAXPAYER	PAID IN BY DEPARTMENT
11 Declared value (must be identical figure entered in item 9)	100 000	
12 Tax at rate of \$1 for each full \$1,000 in item 9	100	
13 Penalty of _____ percent for delinquency in filing return		
14 Interest at 6 percent per annum beginning Aug 1, 1938		
15 Total tax, penalty, and interest	100	
16 State amounts of outstanding capital stock and surplus as of date of the close of income tax taxable year reported in item 5 above. (If not stock organization, so indicate and attach statement of net worth)		
	NUMBER OF SHARES	PAID IN BY TAXPAYER PER SHARE
Capital stock - Preferred		
Common		
Capital or paid-in surplus	XXXXXXXXXX	XXXXXXXXXX
Surplus reserves	XXXXXXXXXX	XXXXXXXXXX
Surplus and undivided profits	XXXXXXXXXX	XXXXXXXXXX

DUPLICATE

FRONT AND DEPTH	UNIT PRICE	DEPTH FACTOR	CORNER FACTOR	VALUE
200 x 144	130	1.044		271.44
50 x 125	130	1.000		1300
				<hr/>
				284.44
LOT SIZE	TOTAL LAND			

	A 1939	
LAND	28444	10525
BLDGS.	122483	45319
TOTAL	150927	55844
MEMO		

SQUARE FEET 55682		UNIT PRICE 3.25		NEW COST 1 809 68		CONDITION GOOD FAIR BAD		COND. 67	
CUBIC CONTENTS		CLASS 1573B		LACK OF UTILITY		OR GOOD-LESCENCE		17 AGE	
GARAGE	TYPE	FLOOR	ROOF	SIZE	AREA	UNIT PRICE	NEW COST	COND.	
2 FIN	BSMT	Rooms					935	66	
SHEDS									
4 BSMT	BATHS						938	66	

BASE PRICE	3.20
BASEMENT	
FIN. ATTIC	
HEAT	
ENCLOSED PORCH	
TOTAL	

FRONT AND DEPTH	UNIT PRICE	DEPTH FACTOR	CORNER FACTOR	VALUE
LOT SIZE	TOTAL LAND			

SQUARE FEET		UNIT PRICE		NEW COST		GOOD	FAIR	BAD	\$ COND.
CUBIC CONTENTS		CLASS				LACK OF UTILITY		OR OBSCURANCE	AGE
GARAGE	TYPE	FLOOR	ROOF	SIZE	AREA	UNIT PRICE	NEW COST		\$ COND.
SHEDS									

BASE PRICE	
BASEMENT	
FIN. ATTIC	
HEAT	
ENCLOSED PORCH	
TOTAL	

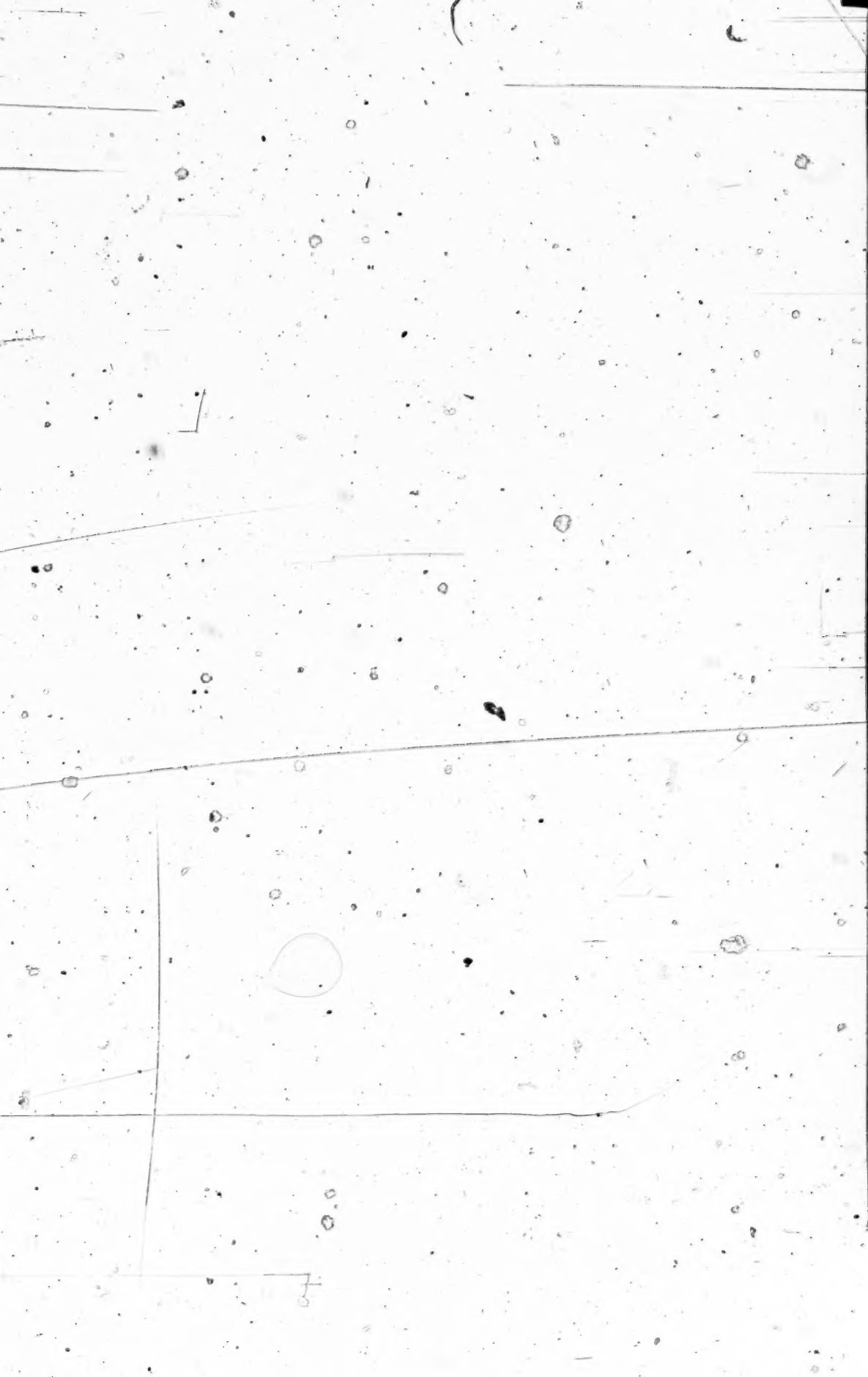
Adm from MANOR

55682 - 265 W 275 AV. RM. AREA

210

$$\frac{210}{96} = 2.1 \text{ AVRMS PER RPT}$$

UNIT PRICE = 370



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RESPONDENT'S EXHIBIT F.

and

Whereas, in accordance with the provisions of said Reorganization Plan as amended, Claridge Building Corporation and Minnie H. Case are required to convey to this corporation the property described in said Reorganization Plan as amended, and this corporation is required to issue 3078 shares of its common stock without par value, to enter into a trust agreement, to execute indemnification agreements, to enter into a management contract, to assume and agree to pay the unpaid foreclosure and reorganization expenses before any dividends shall be declared or paid upon its stock, to pay to Minnie H. Case the sum of \$1400.00 for the personal property to be conveyed by her to this corporation, and to keep and perform all other covenants, conditions and agreements in said Reorganization Plan as amended contained which said Reorganization Plan as amended contemplates that the corporation shall keep and perform; all in the manner provided in said Reorganization Plan as amended; and

Whereas, in the opinion of the Board of Directors of this corporation, the property to be conveyed to this corporation in accordance with said Reorganization Plan as amended (exclusive of the personal property to be conveyed to this corporation by Minnie H. Case), after taking into consideration the liabilities to be assumed by the corporation pursuant thereto (exclusive of the sum of \$1400.00 to be paid Minnie H. Case for the personal property to be conveyed by her to this corporation), is of the value of \$189,266.22, computed as follows:

Land	\$ 50,000.00
Building	162,000.00
(exclusive of personal property to be conveyed to this corporation by Minnie H. Case)	2,600.00
	<hr/>
	\$214,600.00
Less liabilities to be assumed by the corporation (exclusive of the sum of \$1400.00 to be paid Minnie H. Case for the personal property to be conveyed by her to this corporation)	25,333.78
	<hr/>
	\$189,266.22

and

Whereas, in the opinion of the Board of Directors of this corporation, it is for the best interests of this corporation that said Reorganization Plan as amended be consummated;

Now, Therefore, Be It Resolved: That upon the conveyance to this corporation of the property described in said Reorganization Plan as amended, and upon the substantial consummation of said Reorganization Plan as amended, the President and Secretary of this corporation be and they are hereby authorized and directed to issue 3078 shares of common stock of this corporation without par value (including the 20 shares issuable to the original subscribers which have been paid for in cash in the amount of \$1,000.00 and have been available for issuance under said Reorganization Plan as amended, by said original subscribers) to the persons and in the manner directed in said Reorganization Plan as amended, said stock to be fully paid and non-assessable;

Be It Further Resolved: That the President and Secretary of this Corporation be and they are hereby authorized and directed to execute and deliver, for and on behalf of this corporation, a trust agreement in words and figures as follows, to-wit:

RESPONDENT'S EXHIBIT G.

Thereupon, motion duly made, seconded and carried, the following resolution was unanimously adopted:

Whereas, pursuant to the Reorganization Plan as amended of Claridge Building Corporation (Claridge Apartments), this corporation is required to assume and agree to pay the unpaid reorganization expenses, the approximate amount of which is \$13,500.00; and

Whereas, the Claridge Apartments are subject to delinquent taxes, the approximate amount of which, including estimated taxes for the first half of 1934 is \$13,000.00; and

Whereas, from the funds available and about to become available from the operation of the property approximately \$8,000.00 can be applied on account of the payment of the unpaid reorganization expenses and taxes, so that a sum of approximately \$18,500.00 is required to provide for the payment of the balance of such unpaid reorganization expenses and taxes; and

Whereas, in the opinion of the Board of Directors it is advisable to provide for the payment of delinquent taxes, so that a saving can be effected in the interest and penalties due thereon, for the establishment of a reserve for the payment of the first half of the 1934 taxes and for the payment of the unpaid reorganization expenses and to borrow such amount of funds as is necessary therefore; and

Whereas, a commitment has been procured for a loan in an amount not to exceed \$18,500.00, to be secured by a first mortgage on the property of this corporation executed by this corporation, to bear interest at the rate of 5% per annum, to mature in seven and one-half years, with the privilege of pre-payment in this corporation of all or any part of the loan on any interest payment date upon payment of a premium of 2% for the first two years, but no premium thereafter, at a commission charge of 1½% on the amount loaned, plus \$75.00 to cover attorneys' fees of the lender; the net proceeds of which loan will be used to pay the unpaid reorganization expenses and taxes, including the establishment of a reserve for the payment of the first half of the 1934 taxes; and

Whereas, the terms of such proposed loan have been approved by the United States District Court, which confirmed the Reorganization Plan as amended, and in the opinion of the Board of Directors of this corporation are unusually fair;

Now, Therefore, Be It Resolved: That the Board of Directors of this Corporation recommend such first mortgage and direct the submission of the execution and delivery thereof to a vote at a Special Meeting of Shareholders of this corporation, to be held on the 9th day of September, 1935, at the hour of 11:00 o'clock A. M.

Be It Further Resolved: That upon the authorization of such mortgage by the shareholders, the proper officers of this corporation be, and they are hereby authorized and directed, in behalf of this corporation, to execute a note or notes of this corporation to evidence the loan, and to execute and deliver a first mortgage or trust deed of this corporation to secure same, said mortgage or trust deed to convey the following described property of this corporation:

Lots one hundred nine (109), one hundred ten (110), one hundred eleven (111) and one hundred twelve (112) of Sheridan Drive Subdivision of the North Three-quarters (N¼) of the East Half (E½) of the Northwest Quarter

(NW 1) of Section seventeen (17), Township Forty (40) North, Range fourteen (14), East of the Third Principal Meridian together with that part of the West Half (W 1/2) of the Northwest Quarter (NW 1/4) of said Section which lies North of the South eight hundred (800) feet thereof and East of Green Bay Road, in Cook County, Illinois.

141. such note or notes and such mortgage or trust deed to contain such terms and provisions, not inconsistent with these resolutions, as said officers shall, in their discretion, determine, and to execute all other papers and documents and do all things necessary or desirable to consummate said loan and to apply the net proceeds thereof towards the payment of the unpaid reorganization expenses and taxes, including the establishment of a reserve for the payment of the first half of the 1934 taxes.

142. RESPONDENT'S EXHIBIT H.

Whereas, pursuant to the Reorganization Plan as amended of Claridge Building Corporation, this corporation is required to assume and agree to pay the unpaid reorganization expenses, the approximate amount of which is \$13,500.00; and

Whereas, the Claridge Apartments are subject to delinquent taxes, the approximate amount of which, including estimated taxes for the first half of 1934, is \$13,000.00; and

Whereas, from the funds available and about to become available from the operation of the property approximately \$8,000.00 can be applied on account of the payment of the unpaid reorganization expenses and taxes, so that a sum of approximately \$18,500.00 is required to provide for the payment of the balance of such unpaid reorganization expenses and taxes; and

Whereas, in the opinion of the shareholders it is advisable to provide for the payment of delinquent taxes, so that a saving can be effected in the interest and penalties due thereon, for the establishment of a reserve for the payment of the first half of the 1934 taxes and for the payment of the unpaid reorganization expenses and to borrow such amount of funds as is necessary therefore; and

Whereas, a commitment has been procured for a loan in an amount not to exceed \$18,500.00, to be secured by a

first mortgage on the property of this corporation executed by this corporation, to bear interest at the rate of 5% per annum, to mature in seven and one-half years, with the privilege of pre-payment in this corporation of all or any part of the loan on any interest payment date upon payment of a premium 2% for the first two years, but no premium thereafter, at a commission charge of $1\frac{1}{2}\%$ on the amount loaned, plus \$75.00 to cover attorneys' fees of the lender; the net proceeds of which loan will be used to pay the unpaid reorganization expenses and taxes, including the establishment of a reserve for the payment of the first half of the 1934 taxes; and

Whereas, the terms of such proposed loan have been approved by the United States District Court, which confirmed the Reorganization Plan as amended, and in the opinion of the shareholders of this corporation are unusually fair;

Now, Therefore, Be It Resolved: That the proper officers of this corporation be, and they are hereby authorized and directed, in behalf of this corporation, to execute a note or notes of this corporation to evidence the loan, and to execute and deliver a first mortgage or trust deed of this corporation to secure same, said mortgage or trust deed to convey the following described property of this corporation:

Lots one hundred nine (109), one hundred ten (110), one hundred eleven (111) and one hundred twelve (112) of Sheridan Drive Subdivision of the North three-quarters (3) of the East Half ($E\frac{1}{2}$) of the Northwest Quarter (NW 1) of Section seventeen (17), Township Forty (40) North, Range fourteen (14), East of the Third Principal Meridian, together with that part of the West Half ($W\frac{1}{2}$) of the Northwest Quarter (NW 1) of said Section which lies North of the South eight hundred (800) feet thereof and East of Green Bay Road, in Cook County, Illinois;

such note or notes and such mortgage or trust deed to contain such terms and provisions, not inconsistent with

these resolutions, as said officers shall, in their discretion, determine, and to execute all other papers and

documents and do all things necessary or desirable to consummate said loan and to apply the net proceeds thereof towards the payment of the unpaid reorganization expenses and taxes, including the establishment of a reserve for the payment of the first half of the 1934 taxes.

The Chairman thereupon read to the shareholders the minutes of the Special Meeting of the Board of Directors of this corporation held on July 1, 1935, at the hour of 10:00 o'clock A. M., and presented the Reorganization Plan as amended and order confirming and approving same, the Trust Agreement, the Indemnification Agreements and the Management Contract attached to said minutes. The minutes and documents attached thereto were examined and considered, and on motion duly made, seconded and carried, the following resolution was unanimously adopted:

Resolved: That all action of the Board of Directors of this corporation taken at their meeting held on July 1, 1935, at the hour of 10:00 o'clock A. M., as evidenced by the minutes of said meeting, be and the same is hereby ratified, approved and confirmed in all respects.

There being no further business, the meeting thereupon adjourned.

(signed) M. C. Kuehn,
Chairman.

(signed) James Webber,
Acting Secretary.

RESPONDENT'S EXHIBIT I.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—56230)

FINAL DECREE.

This cause coming on to be heard upon the motion of the Debtor and of George W. Rossetter, Jay C. McCord and Sidney H. Kahn, constituting the Claridge Apartments First Mortgage Bondholders' Committee, pursuant to a deposit agreement dated September 9, 1931, therein after referred to as the "committee") for the entry of a decree herein finally closing this proceeding, and the Court, having been fully advised concerning the proceedings heretofore had and taken herein and having heard the statements of counsel for the committee, and upon due notice to all attorneys of record, and the court being fully advised in the premises, finds:

That on May 14, 1935, an order was entered herein con-

firming and approving the plan of reorganization filed by the debtor decreeing the same to be in full force and effect.

And it further appearing to the Court that said plan of reorganization has now been fully and completely executed, carried out, and accomplished and that the new securities called for by said plan of reorganization have either been distributed to the persons entitled thereto or are available to such persons.

And it further appearing to the Court that all acts and proceedings of the Debtor in this cause have been pursuant to and in conformity with the requirements of Section 77-B of an Act of Congress, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States and Acts Amendatory and Supplemental Thereto."

145 It is therefore ordered, adjudged, and decreed.

1. The plan of reorganization therefore confirmed by this Court is hereby declared to be in all respects fully executed, carried out, and accomplished.

2. The action of Edmund D. Adcock as Special Master, in releasing the trust deed and chattel mortgage from Claridge Building Corporation to Melvin L. Straus, Trustee, dated March 25, 1924, and recorded in the office of the Recorder of Deeds of Cook County, Illinois, as document 8340617, should be and the same is hereby approved and ratified in all respects.

3. The Acts and doings of the Debtor, the Committee, and the other parties named therein, in executing the various agreements and documents provided for in said plan of reorganization and approved by the Court be and the same are hereby approved in all respects.

4. That all the first mortgage bonds in the principal amount of \$277,000.00 and interest coupons thereto attached, secured by trust deed and chattel mortgage to Melvin L. Straus, dated March 25, 1924, recorded in the office of the Recorder of Deeds of Cook County, Illinois, as document No. 8340617 and said trust deed and chattel mortgage, are hereby declared to be of no further force and effect as against the Debtor or its property, and the holders thereof shall be entitled to receive only the new securities provided for in said plan of reorganization, and all holders, pledgees, and owners of bonds and interest coupons secured by said first mortgage trust deed and

chattel mortgage, and Melvin L. Straus, Trustee thereunder, shall be and they are hereby forever jointly and severally enjoined from commencing and or prosecuting any proceedings of any nature whatsoever against the Debtor, its grantees successor or assigns, or against any of the property of the Debtor on any of said first mortgage bonds or interest coupons and all creditors and stock holders of the Debtor, secured and unsecured, are hereby forever enjoined and restrained from taking or continuing any action, steps or proceedings or bringing or continuing

any suit or action at law, in equity, or otherwise, against the Debtor or its property for, on account of, or by reason of any claim, matter, judgment, or thing, excepting only such liabilities and claims which the Debtor has expressly assumed or agreed to pay pursuant to the terms and provisions of the said plan of reorganization.

5. Melvin L. Straus, as Trustee, complainant in the suit entitled "Melvin L. Straus, Trustee, vs. Claridge Building Corporation, et al.," Case No. 544125, Superior Court of Cook County, and all other persons, be, and they are permanently restrained and enjoined from taking any further action in connection with said proceedings.

6. Said Debtor, Claridge Building Corporation, should be and it is hereby discharged from all its debts, claims and liabilities existing on June 16, 1934, the date of the filing of the petition herein.

7. The proceedings in this Court entitled "In the Matter of Claridge Building Corporation, a corporation, Debtor", Case No. 655125, be and the same are terminated and finally closed.

Enter:

Philip W. Sullivan,
Judge.

Chicago, Illinois,
3 1 37.

147 . THE TAX COURT OF THE UNITED STATES.

Filed
Dec. 4,
1942.

Claridge Apartments Company, an Illinois Corporation,
Petitioner, vs. Commissioner of Internal Revenue, Re-
spondent.

Docket No. 106868. Promulgated December 4, 1942.

1. Neither expenses incident to 77B reorganization assumed by transferee nor nominal stock interest in reorganized company accorded to stockholders of predecessor *held* to disqualify transaction as a "reorganization" under Revenue Act of 1934, section 112. *Held*, *reversing v. Southwest Consolidated Corporation*, 315 U. S. 194, distinguished. *Held, further*, on facts exchange of property was solely for petitioner's stock.

2. Provisions of the Chandler Act relating to taxation of income resulting from reduction of indebtedness in reorganizations, *held* applicable to the entire calendar year 1938, and to interest forgiven, but *held, further*, not applicable in the case of substitution of common stock for outstanding principal of bonds.

Walter Hamilton, Esq., for the petitioner.

David Altman, Esq., and George E. Gibson, Esq., for the respondent.

By this proceeding petitioner charges that respondent erred in determining deficiencies in the amounts and for the years indicated as follows:

Year	Income tax	Excess profits' tax
1935	\$844.39	\$57.05
1936	706.92
1937	752.76
1938	985.67	10.80

The contested issues relate to petitioner's basis for depreciation of its apartment house property and deduction of items for painting and repairing.

Findings of Fact.

Petitioner is a corporation, organized May 28, 1935, under the laws of the State of Illinois pursuant to a proceeding under 77B of the National Bankruptcy Act. It filed its income and excess profits tax returns for the years 1935 to 1938, inclusive, with the collector of internal revenue for the first district of Illinois.

148 The Claridge Building Corporation, also an Illinois corporation, and hereinafter for convenience referred to as the Building Corporation, acquired the lot at 4501 Malden Street, Chicago, Illinois, from Charles F. Henry in 1924. The acquisition was pursuant to a contract whereby the Building Corporation agreed to issue and did issue its entire authorized capital stock to Charles F. Henry in consideration of the transfer of the lot by Henry. During the spring and summer of 1924 the Building Corporation caused an apartment building to be erected on the lot at a cost of \$385,326.37. By August 1, 1935, \$139,253.71 depreciation had been taken on a "cost" of \$424,609.19 which included a contractor's commission to Henry.

Up to 1932 the stock of the Building Corporation, with the exception of two qualifying shares, was owned by Charles F. Henry. In 1932 and thereafter it was stated to be held as follows: Minnie H. Case, sister of Charles F. Henry, 198 shares; Howard D. Henry and Albert A. Henry, brothers of Charles F. Henry, one share each.

On March 25, 1924, the Building Corporation issued its 64 per cent first mortgage bonds in the principal amount of \$340,000. The bond issue was secured by trust deed and chattel mortgage covering the property located at 4501 Malden Street, executed March 25, 1924, to Melvin L. Straus, as trustee. On October 1, 1931, the bonds were outstanding and unpaid in the principal amount of \$277,000. Defaults having therefore occurred in the payments of principal and interest, the trustee filed a bill of foreclosure on October 1, 1931, and all of the bonds were declared immediately due and payable. A decree of foreclosure was entered on February 19, 1932, but there was no sale of the mortgaged property under the decree and the foreclosure proceeding was never consummated. The trustee took possession of the property and collected the rents after October 1, 1931.

On September 9, 1931, a bondholders' committee was

organized under a deposit agreement of that date with the American National Bank & Trust Co. of Chicago. As of November 27, 1934, the committee had on deposit with the bank \$258,600 of the bonds, or approximately 93 per cent of the total amount of the bonds outstanding.

On June 16, 1934, the Building Corporation filed a voluntary petition in the District Court of the United States for the Northern District of Illinois, Eastern Division, under section 77B of the National Bankruptcy Act as amended.

On November 27, 1934, the bondholders' committee, the Building Corporation, and Minnie H. Case agreed on a reorganization plan. The plan recited that Minnie H. Case was the record holder of the title to the property in question, but that she held title for the benefit of the 140 Building Corporation, and that she owned the furnishings of some of the apartments.

The plan provided, *inter alia*, as follows:

1—A new corporation shall be organized under the laws of the State of Illinois with an authorized capital stock consisting of 3,080 shares of common stock without par value, or with such par value as may be agreed upon by the parties hereto. Upon completion of the reorganization, Minnie H. Case shall convey title to the property to said new corporation and the [Building] corporation shall execute a confirmatory quitclaim deed to the new corporation. 2,776 shares of the common stock of the new corporation shall be issued to three Trustees to be selected by the Committee, subject to the approval of the court. Trust certificates shall be issued to the holders of the first mortgage bonds and each first mortgage bondholder shall receive a trust certificate representing one share of stock for each \$100.00 in face amount of bonds owned by him. The stock so issued to said Trustees shall constitute 90% of the outstanding stock of the new corporation. 10% of the outstanding stock of the new corporation shall be issued to or upon the order of the Owner [the stockholders of the Building corporation].

4—The new corporation shall by written agreement indemnify the present Trustee under the bond issue against any and all liability which he may suffer or incur by reason of his operation of the property (other

than for wrongful acts of the Trustee) and against any and all taxes, assessments or other governmental charges which may be levied or assessed against him covering the period of his possession of the property. The new corporation shall also by written agreement indemnify the Committee against any and all taxes, assessments or other governmental charges which may be levied or assessed against it and against any and all liability which may be suffered or incurred by the Committee by virtue of the reorganization plan, including the expenses and reasonable attorneys' fees in the event that litigation is instituted against the Committee or any member thereof.

The new corporation shall assume and agree to pay the reorganization expenses hereinafter referred to and these expenses shall be paid in full before any dividends shall be declared or paid upon the stock of the new corporation. Subject to the approval of the court, the following reorganization expenses shall be allowed:

(a) To cover the general expenses and compensation of the Committee including the charge of Securities Service Corporation, 1% of the face amount of deposited bonds plus out of pocket expenses;

(b) Charge of the Depositary on the basis of three fourths of 1% of the face amount of deposited bonds plus out of pocket expenses;

(c) Compensation of counsel for the Committee;

(d) Compensation of counsel for the owner.

In addition there shall be allowed the expenses and charges in the foreclosure proceeding, including the Trustee's fee, the fee of Trustee's counsel, court costs and Master's fees. There shall also be allowed and paid the actual expenses to be incurred in connection with the organization of a new corporation, printing of the trust agreement and the new securities, stamp taxes, title guaranty expense, court costs in the bankruptcy proceeding and other similar items.

150 Upon consummation of the reorganization, the present Trustee shall surrender possession to the new corporation and all net assets of the Trustee over and above the liabilities of the Trustee in connection with the operation of the property shall be applied toward the payment of the reorganization expenses.

The plan also provided that Minnie H. Case was to execute and deliver to the new corporation a bill of sale covering all of the personal property owned by her which was located in the apartments, for which she should be paid the sum of \$1,400. The new corporation was to enter into a management contract with Minnie H. Case and she was to be one of the three directors of the new corporation. The plan, after amendment not material here, was confirmed and approved by the court in an order dated May 14, 1935.

The court order provided for the release of the trust deed and chattel mortgage of March 25, 1924, and stated that the bonds and interest coupons were satisfied and of no further force and effect and authorized the issuance of the new securities.

The final decree in the 77B proceeding entered March 1, 1937, provided in part as follows:

1: The plan of reorganization theretofore confirmed by this court is hereby declared to be in all respects fully executed, carried out and accomplished.

4: That all of the first mortgage bonds in the principal amount of \$277,000.00 and interest coupons thereto attached, secured by trust deed and chattel mortgage to Melvin L. Straus, dated March 25, 1924, recorded in the office of the Recorder of Deeds of Cook County, Illinois, as document No. 8340617, and said trust deed and chattel mortgage, are hereby declared to be of no further force and effect as against the Debtor or its property, and the holders thereof shall be entitled to receive only the new securities provided for in said plan of reorganization, and all holders, pledgees and owners of bonds and interest coupons secured by said first mortgage trust deed and chattel mortgage, and Melvin L. Straus, Trustee, thereunder, shall be and they are hereby forever jointly and severally enjoined from commencing and or prosecuting any proceedings of any nature whatsoever against the Debtor, its grantees, successors or assigns, or against any of the property of the Debtor on any of said first mortgage bonds or interest coupons, and all creditors and stockholders of the Debtor, secured and unsecured, are hereby forever enjoined and restrained from taking or continuing any action, steps or proceedings or bringing or continuing any suit or action at law, in

equity or otherwise against the Debtor or its property for, on account of, or by reason of any claim, matter, judgment or thing, excepting only such liabilities and claims which the Debtor has expressly assumed or agreed to pay pursuant to the terms and provisions of said plan of reorganization.

5: Melvin L. Straus, as trustee, complainant in the suit entitled "Melvin L. Straus, trustee, vs. Claridge Building Corporation, et al.," case No. 544125, Superior Court of Cook County, and all other persons be and they hereby are permanently restrained and enjoined from taking any further action in connection with said proceedings.

151 Pursuant to the plan petitioner was organized and the property transferred to it. Minnie H. Case also transferred the furniture which she owned in the apartment building to petitioner.

As of August 1, 1935, there were delinquent taxes outstanding of \$13,000. The reorganization expenses amounted to approximately \$13,500. The trustee had approximately \$8,000 on hand.

Expenses of the foreclosure proceeding in the state court were as follows:

Master's fee	\$1,250.00
Trustee's fee	1,050.98
Attorneys for trustee	2,970.98
	<hr/>
	\$5,271.96

Minutes of petitioner's board of directors meeting of August 7, 1935, recited as follows:

Whereas, pursuant to the Reorganization Plan as amended of Claridge Building Corporation (Claridge Apartments), this corporation is required to assume and agree to pay the unpaid reorganization expenses, the approximate amount of which is \$13,500.00; and

Whereas, the Claridge Apartments are subject to delinquent taxes, the approximate amount of which, including estimated taxes for the first half of 1934, is \$13,000.00; and

Whereas, from the funds available and about to become available from the operation of the property approximately \$8,000.00 can be applied on account of the payment of the unpaid reorganization expenses and

taxes, so that a sum of approximately \$18,500.00 is required to provide for the payment of the balance of such unpaid reorganization expenses and taxes.

On a reference of the matter to the stockholders similar recitals were made in the minutes of their meeting held September 9, 1935.

In order to meet these obligations it was necessary for petitioner to borrow \$18,500. A loan in this amount secured by a mortgage on the property was obtained by petitioner and approved by the court on July 26, 1935.

The reorganization expenses in the approximate total amount of \$13,500 were paid by petitioner in the latter part of 1935 or the early part of 1936.

The certificates of deposit which were issued by the bondholders' committee were traded in as an over the counter security in Chicago during the year 1935 at a market price ranging from \$190 to \$207.50 for a certificate representing a \$1,000 bond. In December of 1935, after most of the petitioner's stock had been issued, the market price for certificates of deposit not yet turned in for petitioner's stock was \$190 per thousand dollar certificate of deposit. The market for securities of Chicago real estate corporations, organized or in the process of being reorganized, was poor during the year 1935.

152. Under the plan the petitioner's stock was issued at the rate of one share per \$100 face value of bonds of the old company. The fair market value of petitioner's stock never exceeded \$45 per share at any time during the year 1935.

Petitioner's capital stock consisted of 3,080 shares of common stock without par value. On September 5, 1935, 2,770 shares were issued to certain nondepositing bondholders and to voting trustees for the depositing bondholders to whom were issued trust certificates, each certificate representing one share of stock. Three hundred and eight shares of petitioner's stock were issued to the old stockholders, Minnie H. Case receiving 300 shares and Charles F. Henry 8 shares. Two shares remained unissued.

The building at 4501 Malden Street is a three story and basement court type apartment building with a large terrazzo floored lobby from which stairways lead up to the various groups of apartments. It contains 106 apartment

There are eighty 2 1/2-room apartments (living room, in-a-door bed, large dressing closet, dinette, kitchen, and bath) and twenty-six 3 1/2-room apartments (extra bedroom). The first story of the building is fireproof and the other two stories are brick and frame, with brick walls surrounding each apartment unit. Pressed brick was used on the street fronts and courts. Each apartment has a refrigerator, gas range, tall china cabinet and linen case, a full size door mirror, vitreous china lavatory and toilet, and a bay window. The building has two large Kewanee boilers (one of which gives sufficient service), six laundries, intercommunicating telephone system, Government approved mail boxes, push bells and speaking tubes, carpeted stairs and hall, and best grade clear oak floors.

The property in question, including the apartment building and furnishings and the lot on which situated, was sold in July 1940, for \$126,200, plus an assumption of about \$20,000 of liabilities. The market in 1940 was much higher and more active than in 1935.

The fair market value of the apartment building located at 4501 Malden Street, Chicago, exclusive of the land as of May 14, 1935 (the date on which the court confirmed the plan) was not in excess of \$141,000. The fair market value of the land on that date was \$16,000.

The adjusted basis of petitioner's predecessor in 1935 was \$229,377.33.

At the date of acquisition by petitioner the building had a remaining useful life of 25 years.

Petitioner reported its income and deductions on an accrual system of accounting. Under the system of accounting used by petitioner it deducted on its returns all expenses for painting and decorating and repairs in the year in which such expenses were paid. On its 1936 return petitioner included its expense deductions an amount of \$1,219.44 expended in that year for painting and decorating and \$389.60 expended in that year for repairs. These identical items were deducted for a second time in petitioner's 1937 return, and for that reason were disallowed by respondent for that year.

OPINION.

OPPER, J.: The first point in controversy is the correct basis for depreciation on petitioner's property, the problem being whether that is cost to petitioner or its predecessor's adjusted basis. The primary question is whether under Revenue Act of 1934, section 112, and particularly under the recent decisions of the Supreme Court¹ interpreting it, there was a reorganization when, in a 77B proceeding, petitioner's predecessor transferred to it its only asset, a building called the Claridge Apartments, in exchange for the issuance to the predecessor's creditors of 90 percent, and to its stockholders of 10 percent of petitioner's stock.

Whatever doubt there may have been that creditors of an insolvent predecessor corporation can furnish the continuity of proprietary interest necessary to a technical reorganization, has recently been dispelled. *Helvering v. Alabama Asphaltic Limestone Co.*, 315 U. S. 179; *Palm Springs Holding Corporation v. Commissioner*, 315 U. S. 185. Nor are we by any means satisfied of the correctness of respondent's assertion that *Helvering v. Southwest Consolidated Corporation*, 315 U. S. 194, determines the present issue in his favor. It is true that that case emphasizes the requirement of the 1934 Act that to constitute a reorganization the transfer of property must be solely in exchange for the transferor's voting stock, and holds that even an indirect payment partly in cash defeats the attempt to apply it.

But effect is given, of course, to the retroactive amendment of 1939 removing from consideration the assumption of a transferor's indebtedness or acceptance of property subject to it; and the Court is at pains to point out that the transferee in the *Southwest Consolidated* case did more than this when it undertook under the plan to repay cash which had been borrowed to satisfy nonassenting creditors. "But in substance," it remarks, "the transaction was precisely the same as if respondent [the taxpayer] had paid cash plus voting stock for the properties. . . . part of the consideration which respondent paid for

¹ *Helvering v. Alabama Asphaltic Limestone Co.*, 315 U. S. 179; *Palm Springs Holding Corporation v. Commissioner*, 315 U. S. 185; *Rondhold Co. v. Commissioner*, 315 U. S. 185; *Marlborough Investment Co. v. Commissioner*, 315 U. S. 185; *Helvering v. Southwest Consolidated Corporation*, 315 U. S. 194.

the properties of its predecessor was cash in the amount of about \$106,680. The fact that it was paid to the bank 154 rather than to the old corporation or its creditors is immaterial. The requirement to pay cash arose out of the reorganization itself. It derived, as did the requirement to pay stock, from the plan pursuant to which the properties were acquired. . . .

Here the only payments of cash contemplated by the plan were for past-due taxes on the property, expenses of an abortive foreclosure action previously instituted against it, and costs and disbursements of the 77B proceeding itself. Respondent's brief concedes that "the delinquent realty taxes, fees paid to the counsel for the debtor corporation, and possibly fees paid in connection with foreclosure proceedings brought by the indenture trustee, . . . quite possibly (had petitioner offered and introduced the proof relating thereto) might have been shown to represent liabilities of the old debtor company."

We can not conceive that the only remaining item, the expense connected with the reorganization itself, including fees and disbursements to the bondholders' committee and its depository, court costs, and payments for printing and for the organization of petitioner can be of the character to which the Supreme Court referred when it excluded items of which the "nature and amount" were determined and fixed in the reorganization. Such payments did not, like those in the *Southwest Consolidated* case, go indirectly to the old corporation or its creditors. True, in a general sense they constituted part of the cost paid by petitioner for the property received. But they were of a nature characteristic of all reorganizations of this kind, and normally there is no source of payment for them save the new corporation or its property. If they are fatal here, then it is difficult to envision any plan growing out of an equity or 77B receivership which would qualify under section 112. We can not believe such a result was intended.

But, however that may be, we think petitioner has shown enough here to sustain its contention that nothing was paid except liabilities of the predecessor or its property. In Illinois real estate taxes are imposed, if not on the owner, at least on the land and building. *Edward C. Kallsaat*, 40 B. T. A. 528, 535; *Pyramid Metals Co.*, 44 B. T. A. 1087, 1088—upon which they constitute a lien. These

amounted to \$13,000. The foreclosure proceedings likewise set up a liability for costs and expenses to which any conveyance of the property would presumably be subject. *Benton State Bank v. Bennett*, 249 Ill. App. 539; *Christensen v. Niebert*, 259 Ill. App. 96; *Chicago Trust Co. v. 12-14 West Washington St. Building Corporation*, 278 Ill. App. 117. These amounted to \$5,270.98. In addition, the cash in the hands of the trustee for the old company was committed to payment of expenses to its full extent, namely \$8,000.

155 There was thus a total of \$26,270.98 which must be regarded either as indebtedness of the transferor assumed by the transferee or as a charge against the transferred property within the express terms of the 1939 amendment. The small balance of \$229.02 is not only negligible under the circumstances, but we may take notice that it could reasonably have covered only such items as cost of petitioner's incorporation, stamp taxes, printing bills and the like, which were clearly no part of any payment by the transferee to the transferor "in exchange" for the transfer of the property. In the premises we are unwilling to say that petitioner has failed to sustain its burden of showing the necessary facts to invoke the provisions of section 112.

Respondent suggests that this fell short of a tax free reorganization for the additional reason that, while the creditors received 90 percent of petitioner's stock, indicating that they had acquired effective ownership of the predecessor, the stockholders were given a 10-percent interest, which demonstrated that the creditors had not succeeded to an exclusive interest. It is urged, which is the fact, that no such situation existed in the cases recently decided by the Supreme Court.

We think, however, that this is a distinction without a difference. In the first place, if it were possible to imagine a set of circumstances where a corporation was insolvent to the extent that a 90 percent proprietary interest had accrued to its creditors but 10 percent was left in its former stockholders, no reason is apparent why the statutory language would not apply to a plan which gave effect to that division of ownership. The preservation of proprietary interests would be respected quite as much there as in, say, *Helvering v. Southwest Consolidated Corporation*, *supra*. The bondholders here "acquired substantially the entire proprietary interest of the old stockholders."

But in any event, the insolvency of the transferor in the present case is inescapable. There can be no question but that in fact and in law the creditors were in exclusive control. If the plan was improper and subject to disapproval upon the bondholders' objection, see *Northern Pacific Railway Co. v. Bond*, 358 U.S. 482, that would not make it any the less a plan of reorganization upon acceptance by the necessary percentage of bondholders and confirmation by the court, although it might fail to qualify as an "exchange" under 112 (b) (5). See *Helvering v. Cement Manufacturers, Inc.*, U.S. (June 1, 1942). What reason there may have been for the voluntary recognition of the old stockholders to the extent of a nominal share in the new enterprise does not appear. It may well have been a desire not to be ungenerous, or, more likely, a selfish hope that their pecuniary interest would encourage the former shareholders to more effective efforts under the management agreement. Certainly we need not view it as a concession that they retained any equity when the facts deny that possibility. It follows that, as far as the reorganization question goes, petitioner was entitled to the original basis.

Apart from this, however, respondent insists that the provisions of the so-called "Chandler Act,"² particularly

² Public No. 696, 70th Cong., 52 Stat. 840, as amended:

"Sec. 268. Except as provided in section 270 of this Act, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in a plan under this chapter, or by a corporation organized or made use of for effectuating a plan under this chapter, by reason of a modification in or cancellation in whole or in part of any of the indebtedness of the debtor, in a proceeding under this chapter.

"Sec. 269. Where it appears that a plan has for one of its principal purposes the avoidance of taxes, objection to its confirmation may be made on that ground by the Secretary of the Treasury, or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the plan, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the plan.

"Sec. 270. In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income tax return, has been canceled or reduced in a proceeding under

section 270, as amended, require that petitioner's basis be reduced to the fair market value of the property when petitioner received it, but he concedes that under *The Commodore, Inc.*, 46 B. T. A. 718, no year earlier than 1938 would be affected.

157. That the provision does apply to the petitioner's 1938 tax liability, however, seems to us not subject to serious doubt. The act was made effective September 22, 1938, before the end of the petitioner's 1938 tax year, and long before its return for that year became due. The reasons advanced in *The Commodore, Inc.*, *supra*, including reference to the legislative history, are hence inappropriate. The "future" liability to which the Committee referred was evidently an apt description of the present situation, since the end of the year as of which the tax was to be computed and the date when the first installment would become due both lay ahead when the act became effective.

While not strictly a revenue act, the legislation by its terms dealt with taxes, and can be assumed to have en-

tered this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the plan. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section.

"Sec. 276. c. the provisions of sections 77A and 77B of chapter VIII, as amended, of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act, except that

(1) if the petition in such proceedings was approved within three months prior to the effective date of this amendatory Act, the provisions of this chapter shall apply in their entirety to such proceedings; and

(2) if the petition in such proceedings was approved more than three months before the effective date of this amendatory Act, the provisions of this chapter shall apply to such proceedings to the extent that the judge shall deem their application practicable; and

(3) sections 268 and 270 of this Act shall apply to any plan confirmed under section 77B before the effective date of this amendatory Act and to any plan which may be confirmed under section 77B on and after such effective date, except that the exemption provided by section 268 of this Act may be disallowed if it shall be made to appear that any such plan had for one of its principal purposes the avoidance of income taxes; and except further that where such plan has not been confirmed on and after such effective date, section 269 of this Act shall apply where practicable and expedient."

visaged like principles as to periods to which it would apply. It is now so familiar as to be virtually traditional that revenue acts cover calendar years during which they take effect. See *United States v. Hudson*, 299 U. S. 498. In fact, it possibly requires express language to avoid application even to earlier periods. Cf., e.g., Revenue Act of 1938, secs. 1 and 903. And our system of administering income tax computation on an annual basis makes impractical such suggestions as petitioner's that if relevant at all the Chandler Act should be construed to fix depreciation only for the part of the year remaining after it went into effect.

The question remains, however, whether in this case the "indebtedness" . . . has been canceled or reduced" as described in section 270. Section 268 is an obvious legislative effort to release 77B reorganizations from the tax burden of the *Kirby* case,³ and, since section 270 is manifestly in *pari materia* with it, we have to consider whether this is the sort of situation to which either section was intended to apply. It may advance us little to grant that in the meantime some courts have devised a formula for lifting certain types of debt adjustment out of the *Kirby* rule. E.g., *Hirsch v. Commissioner* (C. C. A., 7th Cir.), 115 Fed. (2d) 656. But cf. *Frank v. United States* (U. S. Dist. Ct., E. Dist. Pa.), 44 Fed. Supp. 729. For the theory of that limited group of cases is that the property for the purchase of which the debt was incurred has so declined in value that the cancellation may be regarded as no more than a retrospective readjustment of the original purchase price. That being so, there is no reason to grant the owner a deduction for depreciation computed on a larger base, any more than to permit him to report his ultimate gain or loss on disposition by using the original higher cost. See *Hirsch v. Commissioner*, *supra*.

158. But in another setting, the same result has been reached on a totally different theory. The substitution of common stock for bonds is not a cancellation or reduction of the liability represented by the bonds, no matter how much less the stock may be worth, since the assets are not thereby freed from obligation. While the bond loan has been terminated, the amount borrowed is now committed to capital stock liability in

3. *Kirby Lumber Co. v. United States*, 284 U. S. 1

stead of to the liability of a fixed indebtedness." *Capento Securities Corporation*, 47 B. T. A. 691.

Using this approach, it is evident that there was here no true reduction or cancellation of the original indebtedness, but what amounts to a continuation of it in another form. It follows that neither the language nor the reason for section 270 has any application here. Both gain or loss and depreciation to the new corporation can appropriately be measured by the old basis, without doing violence either to the tax consequences of the reorganization or to the doctrines upon which those consequences rest.

What we have said, however, relates only to the outstanding principal of the bonded debt. The interest was also due, and that it was forgiven rather than transformed into stock appears affirmatively, although its amount is not shown. Adjustment for this item must be made. *Capento Securities Corporation, supra*. True, the statute excludes "accrued interest unpaid" from the write-down of basis on account of forgiveness, but only if "not resulting in a tax benefit on any income tax return." We can not say from the evidence what the facts are in this respect, and accordingly must assume, in respondent's favor, that petitioner's predecessor had obtained a tax benefit as to the entire amount. What that amount should be can, it is to be hoped, be agreed upon by the parties in connection with the computation under Rule 50.

We are not concerned by fears for the constitutionality of such an interpretation in so far as it involves a retroactive application to reorganizations previously completed, like the one before us. The legislative intention to deal with such cases must be accepted. *The Commodore, Inc., supra*. Only the tax liability for the year of enactment is in question. See *United States v. Hudson, supra*. A new basis growing out of a previously completed reorganization may constitutionally be provided. *Schweitzer & Conrad, Inc.*, 41 B. T. A. 533. And in any event, the doctrine of the *Hendler* case⁴ prevented this from being a tax-free reorganization at the time it took place. See *Helvering v. Southwest Consolidated Corporation, supra*. The proper depreciation basis then became petitioner's cost. Only the retroactive amendment of 1939 eliminated the *Hendler* principle and in the meantime the Chandler Act had been

4. *United States v. Hendler*, 303-U. S. 504.

enacted. There was hence no hiatus in petitioner's 159 continuing liability, and the provision, if it can be said to be retroactive at all, certainly made no change in petitioner's position and hence obviously had no unconstitutional effect upon its substantial rights.

This conclusion requires that we find both the predecessor's basis, for the years 1935⁵ through 1937, and the fair market value on confirmation for 1938. The latter is necessary in the event that adjustment for the forgiven interest would otherwise reduce the adjusted basis below that amount. The required figures have been included in our findings of fact. Although petitioner and its predecessor consistently used a higher basis, we have found the one determined by the Commissioner, since the petitioner's witness failed to convince us that any amount was actually paid by the old company for contractor's services, or that the original stock issue in fact covered any more than the land.

In ascertaining fair market value upon confirmation we have given consideration to the highest figure estimated by respondent's expert for the property as a whole, bearing in mind the actual sale in 1940, and the value placed upon the land alone by petitioner's witness, as being most conducive to a computation which is reasonably fair under all the circumstances. This market value may constitute petitioner's basis for 1938, if it develops that it is higher than the original basis reduced by the part of the debt adjustment ratably allocated to the depreciable property in the proportion of original land value to total basis. See Regulations 94, art. 113(b)-2, as amended (1940-2 C. B. 107).

There remains the question of petitioner's claim for deductions of decorating and repair items as business expense for 1937. While the parties are in accord that petitioner's books and tax returns were figured on the "accrual" basis, the explanation given rather resembles a cash or reverse accrual system. The deductions in question were customarily taken in the year payment was made, but they were set up as a sort of reserve running into the following year, not because payment was not due, but apparently on the theory that leases to which they were applicable would return income during that period.

5. Petitioner conceded at the hearing that as owner for only the last five months of 1935 it was entitled to only that proportion of the year's depreciation.

For tax purposes, however, there seems little question that items deducted in one year can not properly be duplicated in the next, and that, whatever the system of accounting, it can not be authorized if it calls for that treatment. Since we are satisfied from the evidence that petitioner is seeking for 1937 a deduction already taken and allowed for the prior year, respondent's disallowance is approved.

Reviewed by the Court.

Decision will be entered under Rule 50.

160 Smith, J., concurring: I agree that the basis for depreciation of petitioner's assets for 1938 is the fair market value of the assets at the date of reorganization. It is stated, however, in the Court's opinion that:

" * * * The substitution of common stock for bonds is not a cancellation or reduction of the liability represented by the bonds, no matter how much less the stock may be worth, since the assets are not thereby freed from obligation. * * * While the bond loan has been terminated, the amount borrowed is now committed to capital stock liability instead of to the liability of a fixed indebtedness." *Capento Securities Corporation*, 47 B. T. A. 691.

I think that this observation is contrary to well recognized principles of law. Where a corporation substitutes shares of stock in exchange for bonds the corporation is freed from indebtedness. A corporation does not owe any debt in respect of its capital stock.

161 THE TAX COURT OF THE UNITED STATES.

(Caption—106868)

Filed
Jan. 4,
1943.

RESPONDENT'S COMPUTATION FOR ENTRY OF
DECISION.

(Filed Jan. 4, 1943.)

The attached proposed computation is submitted, on behalf of the respondent, to The Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Tax Court, without prejudice to the re-

Respondent's Computation.

spondent's right to contest the correctness of the decision entered herein by the Tax Court, pursuant to the statutes in such cases made and provided.

(Signed) J. P. Wenchel,
F. R. S.

J. P. Wenchel,
Chief Counsel, Bureau of
Internal Revenue.

No Objection:

(Signed) Walter Hamilton,
Counsel for Petitioner.

Of Counsel:

F. R. Shearer,
Division Counsel.

David Altman,
George E. Gibson,
Special Attorneys, Bureau of
Internal Revenue.

162 C.TS:CD
MEC:JOA

Statement.

In re: Claridge Apartments Company,
29 South La Salle Street,
Chicago, Illinois.

Docket: #106868

Income and Excess-Profits Tax Liability.

Year	Kind of Tax	Tax Liability	Tax Assessed	Deficiency
1935				
(8 1 '35 to				
12 31 '35)	Income	\$ 599.47	None	\$ 599.47
	Excess-Profits	None	None	None
1936	Income	237.10	None	237.10
1937	Income	282.50	None	282.50
1938	Income	1,247.75	\$363.01	\$884.74
	Excess-Profits	None	None	None
Totals		\$2,366.82	\$363.01	\$2,003.81

The adjustments shown in the attached schedules have been made for decision under Rule 50 in accordance with the opinion of The Tax Court of the United States promulgated December 4, 1942.

163 Claridge Apartments Co.

Year: 1935.

Schedule 1

Net Income

Net income as shown in the deficiency notice dated January 17, 1941	\$6,141.04
Net income adjusted	4,359.75
Adjustment	\$1,781.29

Schedule 2

Explanation of Adjustment

Petitioner is allowed depreciation on building from August 1, 1935 at the rate of 4% on a basis of \$239,377.33, as follows:

$5/12 \times 4\%$ on \$239,377.33 =	\$3,989.62
Amount previously allowed	2,208.33
Additional deduction allowed	\$1,781.29

Respondent's Computation.

Schedule 3

Computation of Tax

Income Tax

Net income, Schedule 1	\$4,359.75
Less: Interest on Liberty Bonds, etc.	None
Balance subject to income tax	\$4,359.75
Income tax at 13 1/2%	\$ 599.47
Income tax assessed:	
Original, account #864084	None
Deficiency in income tax	\$ 599.47

Excess-Profits Tax

Net income, Schedule 1	\$4,359.75
Less: 12 1/2% of \$40,000.00, declared value of capital stock for year ended June 30, 1935	5,000.00
Balance subject to excess-profits tax	None
Excess-profits tax liability	None
Excess-profits tax assessed:	
Original, account #864084	None
Deficiency	None

Respondent's Computation.

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164 Claridge Apartments Co.

Year: 1936.

Schedule 4

Net Income

Net income as shown in the deficiency notice dated January 17, 1941	\$6,971.96
Net income adjusted	2,700.87
Adjustment	<u>\$4,271.09</u>
Deduction:	
(a) Depreciation	\$4,275.09
Addition:	
(b) Accrued capital stock tax liability	<u>4.00</u>
Net adjustment	\$4,271.09

Schedule 5

Explanation of Adjustment

(a) An additional deduction for depreciation is allowed in the amount of \$4,275.09, computed as follows:

Depreciation on building: 4% of \$239,377.33	\$9,575.09
Depreciation previously allowed	<u>5,300.00</u>
Additional amount allowed	\$4,275.09

(b) The deduction previously allowed for accrued capital stock tax liability has been decreased by \$4.00, computed as shown below:

Adjusted declared value of capital stock for the year ended June 30, 1937 as shown in the deficiency notice dated January 17, 1941	\$192,351.46
Deduct: Decrease in 1936 net income	<u>4,271.09</u>

Adjusted declared value	\$188,080.37
Capital stock tax liability accruable	<u>188.00</u>
Deduction previously allowed	192.00

Overstatement	\$ 4.00
---------------	---------

Respondent's Computation.

Schedule 6

Computation of Tax

Income Tax

Normal Tax

Net income, Schedule 4	\$2,700.87
Less: Excess-profits tax	None
Net income for normal tax computation	\$2,700.87

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Normal Tax Computation

Normal tax on \$2,000.00 at 8%	\$ 160.00
Normal tax on \$700.87 at 11%	77.10
Total normal tax	\$ 237.10

Surtax on Undistributed Profits

Net income, Schedule 1	\$2,700.87
Less: Normal tax	237.10

Adjusted net income	\$2,463.77
Less: Dividends paid credit	2,463.77

Undistributed net income

None

Surtax liability

None

Income tax liability

\$ 237.10

Income tax assessed:

Original account = \$633.22

None

Deficiency in income tax

\$ 237.10

Year: 1937.

Schedule 7

Net Income

Net income as shown in the deficiency notice dated January 17, 1941	\$7,388.00
Net income adjusted	3,113.60
Adjustment	\$4,275.00

Respondent's Computation.

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Schedule 8

Explanation of Adjustment

An additional deduction for depreciation is allowed in the amount of \$4,275.09, computed as follows:

Depreciation allowable on building, 4% of \$239,377.33	\$9,575.09
Amount previously allowed	5,300.00
Additional deduction	<u>\$4,275.09</u>

166 Claridge Apartments Co.

Year: 1937.

Schedule 9

Computation of Tax

Income Tax

Normal Tax

Net income, Schedule 7	\$3,113.60
Less: Excess-profits tax	None
Net income for normal tax computation	\$3,113.60
Tax on \$2,000.00 at 8%	\$ 160.00
Tax on \$1,113.60	122.50
Total normal tax	<u>\$ 282.50</u>

Surtax on Undistributed Profits

Net income, Schedule 7	\$3,113.60
Less: Excess-profits tax	None
Normal tax	<u>\$282.50</u>
Adjusted net income	\$2,831.10
Less: Dividend paid credit	<u>2,831.10</u>
Net income subject to surtax	None
Surtax liability	None
Income tax liability	\$ 282.50
Income tax assessed:	
Original, account = \$508.94	<u>None</u>
Deficiency in income tax	\$ 282.50

Respondent's Computation.

Schedule 10

Year: 1938

Net Income

Net income as shown in the deficiency notice dated January 17, 1941

Net income adjusted \$ 10,179.92
9,448.24

Adjustment

\$ 731.68

Schedule 11

Explanation of Adjustments

An additional deduction for depreciation is allowed in the amount of \$731.68, computed as follows:

167 Predecessor's adjusted basis for depreciation of building as of August 1, 1935 \$239,377.33
Less: Depreciation, 8-1-35 to 12-31-37 inclusive1935 \$3,989.62
1936 9,575.09
1937 9,575.09

Total

\$23,139.80

Forgiven interest

\$80,022.20

103,162.00

Adjusted basis, January 1, 1938

\$136,215.33

Market value of building (August 1, 1935) as found by Tax Court

\$141,000.00

Less: Depreciation allowable to Jan. 1, 1938

23,139.80

Adjusted basis, Jan. 1, 1938, computed on market value

\$117,860.20

Base for depreciation (larger amount)

\$136,215.33

Remaining life from Jan. 1, 1938 - 22.742 years.

Depreciation allowable

\$ 6,031.68

Depreciation previously allowed

5,300.00

Additional deduction

\$ 731.68

The amount of forgiven interest is computed as follows:

\$277,000.00 at 6 1/2% for period from 3-25-31 to 9-5-35

\$ 80,022.20

Schedule 12

Computation of Tax

Excess-Profits Tax

Net income, Schedule 10	\$ 9,448.24
Less: 10% of \$100,000.00, declared value of capital stock for year ended June 30, 1938	10,000.00
Balance subject to excess-profits tax	None
Excess-profits tax liability	None
Excess-profits tax assessed	None
Deficiency	None

168 Income Tax Computation

Net income, Schedule 10	\$ 9,448.24
Less: Excess-profits tax	None
Balance subject to income tax	\$ 9,448.24
Tax on \$5,000.00 at 12½%	\$ 625.00
Tax on \$4,448.24 at 14%	622.75
Total income tax	\$ 1,247.75
Income tax assessed:	
Original, account #420125	363.01
Deficiency in income tax	\$ 884.74

169 THE TAX COURT OF THE UNITED STATES.
 • • (Caption—106868) • •

Entered
 Jan. 9,
 1943.

DECISION.

Respondent having on January 4, 1943, filed a recomputation of tax for entry of decision as in accordance with the Findings of Fact and Opinion promulgated December 4, 1942, and petitioner having agreed thereto, now, therefore, it is

Ordered and Decided: That there is a deficiency in income tax for the period August 1, to December 31, 1935,

in the amount of \$599.47; that there is no deficiency in excess-profits tax for the period August 1, to December 31, 1935; that there are deficiencies in income tax for the years 1936, 1937, and 1938 in the respective amounts of \$237.10, \$282.50, and \$884.74, and that there is no deficiency in excess-profits tax for the year 1938.

(Seal)

(S) Clarence V. Oppen,
Judge.

Entered Jan. 9, 1943.

Filed
Mar. 26,
1943.

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THE TAX COURT OF THE UNITED STATES.

(Caption—106868)

PETITION FOR REVIEW AND STATEMENT OF POINTS.

(Filed Mar. 26, 1943.)

Now comes Claridge Apartments Company, a corporation, by Walter Hamilton, its attorney, and petitions the United States Circuit Court of Appeals for the Seventh Circuit for a review of the decision of the Tax Court of the United States rendered and entered January 9, 1943 in cause numbered 106868 on the docket of said Tax Court of the United States, wherein it was petitioner and the Commissioner of Internal Revenue was respondent and in support of its petition respectfully shows this Honorable Court as follows:

Venue.

The Petitioner is and was a corporation organized under the laws of the State of Illinois with its principal office at Chicago, Illinois in the judicial circuit of this Honorable Court. The income tax returns of the petitioner were filed for each of the taxable years, 1935, 1936, 1937 and 1938 in the office of the Collector of Internal Revenue for the Northern District of Illinois which office is, and was at the time said returns were filed located at Chicago and within said judicial circuit.

171 The respondent is the duly appointed, qualified, and acting commissioner of internal revenue of the

United States, holding office by virtue of the laws of the United States.

Prior Proceedings.

The Commissioner determined the deficiencies in income tax for said taxable years as follows:

	Income Tax	Excess Profits Tax
1935	\$844.39	\$57.05
1936	702.92	
1937	752.76	
1938	985.67	10.80

and thereafter petitioner filed its appeal from notice of deficiency with the Tax Court of the United States. The hearing of said appeal by the Tax Court of the United States was held February 25th and 26th, 1942. On December 4, 1942, the Tax Court of the United States promulgated its findings of fact and opinion in said appeal and on January 9, 1943, the Tax Court of the United States entered its final order of redetermination on said appeal, wherein and whereby the said Tax Court of the United States ordered and decided that there were deficiencies and penalties for the taxable years as follows:

	Income Tax
1935	\$599.47
1936	237.10
1937	282.50
1938	884.74
Total	\$2003.81

Thereafter on January 19, 1943, your petitioner paid said taxes and interest so found and received receipt from Collector of Internal Revenue at Chicago, Illinois, in words and figures the following, to-wit:

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Petition for Review by Petitioner.

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Receipt for Payment of Taxes.

Form 1 (Revised May 1940)
Treasury Department
Internal Revenue Service

Income Tax
(Class of Tax)

(Description of collection:
tax, penalty, interest, or

offer in compromise, etc.)

Collector's Office First, District of Illinois
at Chicago Date

(Name and Address of Taxpayer)

Claridge Apartments Co.,

9 D B T A

(Stamped)

Rec'd Return & Remittance

Jan. 19, 1943

Collector of Internal Rev.,

1st Dist., Ill.

Amount \$2619.30

Received Payment

ch

Collector of Internal Revenue

U. S. Government Printing Office

Said tax was so paid to stop the running of interest and to avoid filing appeal bond and with the understanding the amount paid would be returned to petitioner in case such findings and decision of the Tax Court of the United States is reversed.

Nature of the Controversy.

The question presented by the record and this petition for review is whether on August 1, 1935, when your petitioner received title to the premises in question in this case, by reason of reorganization of Claridge Building Corporation, an Illinois corporation, under Section 77B of the Federal Bankruptcy Act, it received it with the cost of the building to the Claridge Building Corporation as the basis of figuring depreciation for income tax purposes, as a tax free reorganization under Section 112 of the 1934 Internal Revenue Act of the United States or whether the market value of said building on that 1935 date should be taken as a basis of depreciation for income tax purposes of petitioner for said years on the ground it was not a tax free reorganization.

The Tax Court of the United States found that petitioner was entitled to take the cost of the said building to Claridge Building Corporation as a basis of depreciation for the years 1935, 1936, and 1937, but erroneously without any evidence to support its finding found that \$385,326.37 should be taken as the cost of such building in 1924 instead of \$424,609.19, which respondent had accepted without question for thirteen years and which was the cost of such building according to the only evidence on the subject which is documentary and unimpeached. The Tax Court of the United States also found the cost of the building as adjusted on August 1, 1935 was \$239,377.33, whereas there was no evidence to support such finding and without dispute in the issues the cost on that date should be \$246,082.66 if the erroneous basis of the said court is taken.

Also the Tax Court considered the effect of Section 270 of the Chandler Act of the United States on the reorganization as of May 14, 1935, whereas the effect of this Act was not put at issue by any pleadings in the case, and especially did the Tax Court of the United States find that the unpaid interest on \$277,000 of first mortgage indebtedness of Claridge Building Corporation prior to and at the date of the reorganization amounting to \$80,022.20 was used as an income tax benefit of Claridge Building Corporation and should be deducted from cost of the building as adjusted under Section 270 of the Chandler Act when ascertaining the depreciation in the return of petitioner for 1938, when that issue was not raised by the pleadings or evidence in the Tax Court of United States and there was no evidence whatever that such interest was so used as a tax benefit and all the evidence is to the contrary.

The tax court found that certain sums were deducted in the Income Tax Return for 1936 as decorating and 174 repairs and the same sums were deducted in the return of 1937. We contend there is no evidence to support this finding.

Statement of Points.

The Petitioner says that in the record and proceedings before the Tax Court of the United States, and in the decision and final order of redetermination rendered and entered by said Tax Court of the United States in said cause, manifest errors occurred and intervened to the prejudice of the petitioner, as follows:

1. The Tax Court of the United States erred in not holding and deciding that \$424,609.19 instead of \$385,326.37 was the cost of the apartment building at 4501 Malden St., Chicago, Illinois in 1924.

2. The Tax Court of the United States, erred in holding and deciding that \$239,377.33 was the adjusted cost of said building on August 1, 1935 instead of holding and deciding that \$246,082.66 was the adjusted cost of said building on said date on the basis of depreciation allowed for 13 years and not objected to or at issue in this case, if \$385,326.37 is taken as the cost of such building in 1924 instead of its real cost of \$424,609.19, but if the real cost is taken, \$285,355.48 is the correct figure.

3. The Tax Court of the United States erred in holding and deciding that \$80,022.20 delinquent interest was used as a tax benefit by Claridge Building Corporation when there was absolutely no evidence to this effect and all the evidence was the other way.

4. The Tax Court of the United States erred in making a finding and decision in regard to delinquent interest of Claridge Building Corporation, on its bond issue, being used or not used as a tax benefit by Claridge Building Corporation when no issue in regard thereto was made by the pleadings or evidence in this case.

175 5. The Tax Court of the United States was without jurisdiction to decide the issue mentioned in Point No. 4 hereof.

6. There is no evidence in the record to sustain the finding of the Tax Court of the United States that amounts deducted for decorating and repairs in the income tax returns of petitioner for 1936 were again deducted by it in income tax returns of 1937.

6. The finding of the Tax Court of the United States of the fair market value of the building on premises known as 4501 Malden St., Chicago, Illinois on Aug 1.

1935 was \$141,000 and not \$256,238.64 is unwarranted in the evidence.

7. The decisions of the Tax Court of the United States is contrary to and unsupported by the facts and evidence.

8. The Tax Court of the United States erred in not finding as a fact that the cost of the building at 4501 Malden St., Chicago, Illinois in 1924 at the time it was built was \$424,609.19.

9. The Tax Court of the United States erred in failing to find that the cost of such building as adjusted on August 1, 1935 was \$246,082.66 dollars, if \$385,326.37 be taken as its original cost, and that if the real cost is taken the remaining cost to be recovered on August 1, 1935 was \$285,355.48.

10. The Tax Court of the United States erred in not finding that the cost of the said building should not be sealed down by any deferred interest of the 1st mortgage bonds of Claridge Building Corporation.

11. The Tax Court of the United States erred as a matter of law in not holding and deciding there is no deficiency in the income and excess profits taxes of petitioner for any of the years 1935, 1936, 1937, and 1938.

Wherefore Petitioner Asks that the decision and order of the Tax Court of the United States in said case be reversed by the United States Circuit Court of Appeals for the Seventh Circuit and that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the clerk of said court for filing; that the appeal be without bond, the said tax having been paid under protest, and that appropriate action be taken to the end that the errors complained of may be reversed and corrected by said Court.

Claridge Apartments Company,

Walter Hamilton,

By Walter Hamilton,

Secretary.

State of Illinois }
 County of Cook } ss:

Walter Hamilton, being first duly sworn on oath, deposes and says that he is secretary of petitioner in the above petition, that he subscribed the same and that he knows the contents thereof and that the same are true in substance and in fact.

Walter Hamilton.

Subscribed and sworn to before me this 22 day of March, A. D. 1943.

Arthur Chittick,
 Notary Public.

(Seal)

Walter Hamilton,
 Attorney for Petitioner,
 29 S. La Salle St., Chicago.
 Tel: Franklin 4849.

The Attorney for Respondent is
 J. P. Wenchel,
 c/o Bureau of Internal Revenue
 Washington, D. C.

Filed
 Mar. 27,
 1943.

177 IS THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Claridge Apartments Company, an
 Illinois Corporation,

Petitioner on Review.

vs.

Commissioner of Internal Revenue,

Respondent on Review.

B. T. A. Docket
 No. 106868.

NOTICE OF FILING PETITION FOR REVIEW AND
 STATEMENT OF POINTS.

(Filed Mar. 27, 1943.)

To: J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue.

You are hereby notified that Claridge Apartments Co., an Illinois Corp., did on the 26th day of March, 1943.

Petition for Review by Respondent.

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file with the Clerk of the Tax Court of The United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Court heretofore rendered in the above entitled case. Copies of the petition for review and the statement of points as filed are hereto attached and served upon you.

Dated this 26th day of March, 1943.

B. D. Gamble,

B. D. Gamble,

Clerk, The Tax Court of The United States.

Service of copy of Petition for Review and Statement of Points acknowledged this Mar. 26, 1943.

(Signed) J. P. Wenchel

J. P. Wenchel,

Chief Counsel, Bureau of Internal Revenue,

Attorney for Respondent.

178 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Guy T. Helvering, Commissioner
of Internal Revenue,

Petitioner on Review,

vs.

Claridge Apartments Company,

Respondent on Review.

B. T. A. Docket

No: 106868.

Filed
Mar. 30,
1943.

PETITION FOR REVIEW.

(Filed Mar. 30, 1943.)

Guy T. Helvering, Commissioner of Internal Revenue, holding office by virtue of the laws of the United States, hereby petitions the United States Circuit Court of Appeals for the Seventh Circuit to review the decision entered by the Tax Court of the United States on January 9, 1943, ordering and deciding that there is a deficiency in income tax for the period August 1 to December 31, 1935, in the amount of \$599.47; that there is no deficiency in excess profits tax for the period August 1, to December 31, 1935; that there are deficiencies in income tax for the years 1936, 1937 and 1938 in the respective amounts of

\$237.10, \$282.50 and \$884.74, and that there is no deficiency in excess-profits tax for the year 1938. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

Claridge Apartments Company, a corporation organized under the laws of the State of Illinois, the respondent on review, filed its income and excess-profits tax returns (Form 1120) for the calendar years 1935, 1936, 1937 and 1938, with the Collector of Internal Revenue for the 179 First Illinois District, Chicago, Illinois, whose office is within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit.

(Sgd.) Samuel O. Clark, Jr.,

Assistant Attorney General

(Signed) J. P. Wenchel,

J. P. Wenchel,

Chief Counsel,

Bureau of Internal Revenue,

Counsel for Petitioner on Review.

Filed
Mar. 30,
1943

180 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Caption—106868)

STATEMENT OF POINTS.

(Filed Mar. 30, 1943.)

Now comes Guy T. Helvering, Commissioner of Internal Revenue, the petitioner on review herein, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the following errors on which he intends to rely in this review:

The Tax Court erred:

1. In holding and deciding that the exchange of old bonds for new stock having a fair market value considerably less than the principal amount of such bonds, did not constitute a cancellation of indebtedness to the extent of such difference, under Section 270 of the Bankruptcy Act, as amended, by the Chandler Act, approved June 22, 1938, effective September 22, 1938 (Public No. 696, 75th Congress), 52 Stat. 840.

2. In holding and deciding that Section 270 of the Bankruptcy Act, as amended, is inapplicable to the de-

termination of basis for depreciation deductions for the calendar years 1935, 1936 and 1937.

3. In failing to uphold the retroactive application of Section 270 of the Bankruptcy Act, as amended, to the calendar years 1935, 1936 and 1937; as required by Articles 113(b)-2 of Regulations 86, 94, 101 and 103, as 181 amended by T. D. 4871, C. B. 1938-2, p. 130 and T. D. 5003, C. B. 1940-2, p. 107.

4. In entering its decision wherein it ordered and decided that there are deficiencies in income tax for the calendar years 1935, 1936 and 1937 in the respective amounts of \$599.47, \$237.10 and \$282.50.

5. In that its decision is not supported by the evidence.

6. In that its decision is contrary to law and regulations.

(Signed) J. P. Wenchel.

RLW

J. P. Wenchel.

Chief Counsel.

Bureau of Internal Revenue.

Counsel for Petitioner on Review.

182 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Caption—106868)

Filed
Mar. 30,
1943.

NOTICE OF FILING PETITION FOR REVIEW.

(Filed Mar. 30, 1943, Apr. 3, 1943.)

To: Walter Hamilton, Esquire,
29 South La Salle Street,
Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 30th day of March, 1943, file with the Clerk of the Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review and a copy of the statement of points as filed are hereto attached and served upon you.

Dated this 30th day of March, 1943.

B. D. Gamble,

Clerk, U. S. Board of Tax Appeals.

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Notice of Filing Petition:

Service of the above and foregoing notice, together with copies of the petition for review and statement of points, is hereby acknowledged this 1st day of April, 1943.

(S.) Walter Hamilton,
Attorney for Respondent on Review.

Filed
Apr. 10,
1943.

185 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Caption—106868)

NOTICE OF FILING PETITION FOR REVIEW.

(Filed April 10, 1943.)

To: Claridge Apartments Company,
29 South La Salle Street,
Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 30th day of March, 1943, file with the Clerk of the Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review and a copy of the statement of points as filed are hereto attached and served upon you.

Dated this 30th day of March, 1943.

(Signed) J. P. Wenchel.

RLW

J. P. Wenchel,
*Chief Counsel, Bureau of Internal
Revenue, Counsel for Petitioner
on Review.*

Personal service of the foregoing notice, together with copies of the petition for review and statement of points mentioned therein, is hereby acknowledged this 1st day of April, 1943.

Claridge Apartments Company,
By Walter Hamilton,
Secretary and Registered Agent.

JWS:rrz 3 29-43.

184 UNITED STATES CIRCUIT COURT OF APPEALS

Filed
Apr. 1,
1943.

For the Seventh Circuit.

April 1, 1943

Before

Hon. William M. Sparks, Circuit Judge.

Hon.

Hon.

• • (Caption) • •

(Filed April 3, 1943.)

On motion of counsel for petitioner, it is ordered that Petitioner's Exhibit 2 and Petitioner's Exhibit 11 shall not be printed, but shall be considered a part of the record in this cause, and that said exhibits be held by the Clerk of the Tax Court of the United States until ten days before this cause is argued in this Court.

It is further ordered that the Clerk of this Court transmit to the Clerk of the Tax Court of the United States a certified copy of this order.

185 UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten page contains a true copy of order entered this day in

Cause No. Tax Court No. 106868

Claridge Apartments Company,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of

Appeals for the Seventh Circuit, at the City of Chicago,
this first day of April, A. D. 1943.

(S) Kenneth J. Carrick,
(Seal). *Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

Filed
Apr. 12,
1943.

186 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Claridge Apartments Company,
Petitioner on Review.

vs.

Guy T. Helvering, Commissioner
of Internal Revenue,
Respondent on Review.

Guy T. Helvering, Commissioner
of Internal Revenue,
Petitioner on Review.

vs.

Claridge Apartments Company,
Respondent on Review.

B. T. A. Docket
No. 106868.

ORDER.

(Filed April 12, 1943.)

Upon consideration of the joint motion filed herein by counsel for the parties in the above-captioned causes, It Is Ordered:

That the above captioned causes be and they are hereby consolidated for briefing, hearing, argument, and decision upon a single consolidated transcript of record, consisting of such portions of the record made before The Tax Court of the United States as the parties herein may indicate by their joint designation of contents of record, omitting any repetition of documents.

It Is Further Ordered that the Clerk of this Court transmit to the Clerk of The Tax Court of the United States a certified copy of this order to be by him incorporated in

Joint Designation of Record.

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the record on review as certified and transmitted by him to this Court.

(s) William M. Sparks,
Judge, U. S. Circuit Court of Appeals.

Dated:
April 9, 1943
Clerk

187 UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing Typewritten page contains a true copy of order entered April 9, 1943, in

(Caption—106868)

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this tenth day of April, A. D. 1943.

(Seal) (S) Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

188 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Caption—106868)

Filed
Apr. 10,
1943.

JOINT DESIGNATION OF CONTENTS OF RECORD
ON REVIEW.

(Filed April 10, 1943.)

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit copies duly certified as correct of the following documents and records in the above-entitled cause

Joint Designation of Record.

in connection with the petition for review heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceeding before the United States Board of Tax Appeals (now The Tax Court of the United States).

2. Pleadings before the Tax Court:

(a) Petition including annexed copy of deficiency letter (Exhibit A).

(b) Answer.

189 3. Findings of fact, opinion and decision.

4. Respondent's computation for entry of decision.

5. Statement of evidence with petitioner's exhibits 3 to 10, inclusive, and 12, and respondent's exhibits A to I, inclusive.

6. Petition for review filed by the taxpayer, together with proof of service of notice of filing and of service of a copy of petition for review.

7. Petition for review filed by the Commissioner, together with proof of service of notice of filing and of service of a copy of petition for review.

8. Statement of Points to be relied upon by taxpayer.

9. Statement of Points to be relied upon by Commissioner.

10. Order of Court granting permission to transmit to the Clerk of the Court petitioner's exhibits 2 and 11 in physical form.

11. Order of Court consolidating the above-captioned causes for briefing, hearing, argument, and decision.

12. This joint designation of contents of record on review.

(S) Walter Hamilton.

Walter Hamilton.

29 South La Salle Street.

Chicago, Illinois.

Counsel for taxpayer.

(Signed) J. P. Wenchel.

RLW

J. P. Wenchel.

Chief Counsel, Bureau of Internal Revenue, Counsel for Commissioner.

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THE TAX COURT OF THE UNITED STATES.
• • (Caption—106868) • •

CERTIFICATE.

I, B. D. Gamble, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 191, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 22d day of April, 1943.

(Seal)

B. D. Gamble,
*Clerk, The Tax Court of the
United States.*

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the fourth day of August, 1943, in:

Claridge Apartments Company, an
Illinois Corporation,
Petitioner,

8296

vs.

Commissioner of Internal Revenue,
Respondent.

Petition for Review of Decision of the Tax Court of the United States.

Commissioner of Internal Revenue,
Petitioner,

8297

vs.

Claridge Apartments Company, an
Illinois Corporation,
Respondent.

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 3rd day of February, A. D. 1944.

Kenneth J. Carrick,

Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

(Seal)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and forty-two, and of our Independence, the one hundred and sixty-seventh.

Claridge Apartments Company, an
Illinois Corporation,
Petitioner,

8296

vs.

Commissioner of Internal Revenue,
Respondent.

Petition for Review of
Decision of the Tax Court
of the United States.

Commissioner of Internal Revenue,
Petitioner,

8297

vs.

Claridge Apartments Company, an
Illinois Corporation,
Respondent.

And afterwards, to-wit: On the first day of December, 1943, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

Nos. 8296-8297.

October Term and Session, 1943.

CLARIDGE APARTMENTS COMPANY,
an Illinois Corporation,
Petitioner.

No. 8296

vs.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

COMMISSIONER OF INTERNAL
REVENUE,
Petitioner.

No. 8297

vs.

CLARIDGE APARTMENTS COMPANY,
an Illinois Corporation,
Respondent.

Petitions for Review of De-
cision of the Tax Court
of the United States.

December 1, 1943.

Before EVANS and MINTON, *Circuit Judges*, and LINDLEY,
District Judge.

EVANS, *Circuit Judge*. This is a Federal income tax case wherein the chief issue arises out of the disputed basis for the depreciation of a large apartment building, acquired by taxpayer in 1935 in a Sec. 77B bankruptcy reorganization proceeding. Corollary issues are:

(1) The applicability of Sec. 270 of the Chandler amendment to the Bankruptcy Act, providing for a decrease of the predecessor's depreciation basis proportionate to a cancellation or reduction of indebtedness through a 77B reorganization. In other words, and to be more specific, taxpayer challenges the soundness of the Commissioner's

holding that an exchange of stock for bonds constitutes a "cancellation or reduction" of the debt within Section 270.

(2) The possible retroactive effect of Sec. 270 to prior tax years in which years the tax has already been paid.

(3) The decrease of the depreciation base by the amount of interest liability allegedly forgiven in the reorganization.

(4) The propriety of the Tax Court's exclusion, from the base, of a substantial sum claimed to have been paid as commission to the entrepreneur of the property.

(5) The refusal of the Tax Court to permit deduction of certain expenses of upkeep of the property.

(6) A separate and distinct issue, arising out of taxpayer's challenge of evidentiary support of the Tax Court's finding as to the value of the property in 1924, is also conditionally present.

The aforesaid legal questions arise out of a rather simple fact statement, with factual dispute well nigh nil.

The property involved is a 106 apartment building in Chicago, which was erected upon a vacant lot owned by Charles F. Henry, a contractor and builder. In 1924, Henry erected this building at an alleged cost of \$385,326.37. He conveyed the land to taxpayer's predecessor, taking in payment therefor, all of its \$100,000 of par value stock. He asserted that he earned and took a commission of ten per cent of the building cost, i. e., \$38,532.64, for services in supervising the construction of the building. This item was excluded by the United States Tax Court in its determination of the cost of the building.

The taxpayer's predecessor fixed its basis for depreciation by adding three items: first, the \$385,326.37 cost of the building; second, \$38,532.64, for contractor's services in supervising construction; and third, a miscellaneous item of \$750.18. On this basis, taxpayer's predecessor each year, in its income tax return, made its depreciation deduction. Up to August 1, 1935, when the taxpayer acquired the property upon the completion of the reorganization proceedings, a total depreciation of \$139,253.71 had been charged. This left (with minor other adjustments not here important) an adjusted depreciation basis of \$239,377.33. Taxpayer asserts this should be accepted as the depreciation basis for the years in dispute (1935-1938).

The Commissioner makes different computations and reaches a different conclusion. Factually, he challenged only the \$38,532.64 item in the taxpayer's base, which item the U. S. Tax Court disallowed.*

Commissioner's position is more nearly one of confession and avoidance. He asserts that the proper basis for depreciation was not \$239,371.33, but rather a sum which was also the market value of the building on August 1, 1935, when the taxpayer acquired the property. The fair value was \$164,450.

Commissioner reached his conclusion in this way: In March, 1924, taxpayer's predecessor floated a \$340,000 6 1/2% bond issue which was defaulted in October, 1931, at which time \$277,000 of bonds were still outstanding. In February, 1932, there was a foreclosure decree, and in June, 1934, bankruptcy proceedings were instituted under Sec. 77B. A plan of reorganization was approved in May, 1935, and the final decree entered, March 1, 1937. The execution of that plan necessitated the exchange of ninety per cent of taxpayer's no par stock for the \$277,000 of bonds,—one share for each one hundred dollars face value of bonds—and the remaining ten per cent of stock going to predecessor's stockholders. The Court found the fair market value of this stock never exceeded \$45 per share.

The Tax Court found that the fair market value of the building at the time of the confirmation of the plan was not in excess of \$141,000 and the fair market value of the land was \$16,000.**

Whether we should accept taxpayer's base of \$239,371.33 or the Commissioner's here-asserted base of \$141,000 turns not so much upon the ascertainment of the facts (concerning which there is dispute as to one item only) as it does on the Commissioner's legal contention that in determining the basis of depreciation he was required to reduce the original basis by the amount of indebtedness of the predecessor which was cancelled or reduced in said bankruptcy proceeding, not however below the fair market value of the property.

* This disallowance was wrongful, so taxpayer here contends, and he asks this court to correct it.

** Although especially irrelevant to the issue, it appears that in July 1940, after the completion of the Sec. 77B reorganization the building and lot were sold for the sum of \$126,000 and the assumption of \$20,000 liabilities.

In other words, we are confronted preliminarily by two questions.

First, by accepting stock in taxpayer company and surrendering the bonds of taxpayer's predecessor, was there a "cancellation or reduction" of the amount of the original indebtedness of taxpayer's predecessor? If this question be answered in the affirmative, then certain other issues become unimportant because of the United States Tax Court's finding that the value of the building in 1935 was \$141,000.

The second question is the applicability of Sec. 270 to the determination of a depreciation base made prior to its enactment. In other words, is Sec. 270 retroactive so as to affect the tax base for depreciation for tax years prior to its enactment.

The decision of the Tax Court satisfied neither party. Both sides appealed (and one brief *amicus curiae* had been filed). Their appeals have been consolidated in this court.

The Tax Court held: (1) Section 270 was applicable to the tax year 1938. (2) Section 270 was not applicable to the prior tax years. (3) There was no "cancellation or reduction" of the indebtedness within the meaning of this statute when the bonds were exchanged for stock of equal book value, so as to require diminution of the depreciation base. (4) The interest item which was wiped out in the reorganization was deductible, under Sec. 270, from the 1938 depreciation base. (5) The 10% commission was improperly included in the original cost, and therefore in the depreciation base. (6) Certain items of taxpayer's alleged expense were, by it, improperly deducted.

The Commissioner appeals from rulings (2) and (3). The taxpayer appeals from the holding of the court in (1), (4), (5), and (6).

Several of the above-stated issues will become moot if the Government's first contention, namely, that Sec. 270 controls, is upheld. We therefore turn first to a consideration of this section, which is quoted below.* Also quoted is Sec. 268.

* Sec. 270 [as further amended by the Act of July 1, 1940, c. 500, 54 Stat. 769]. In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including ac-

Rejecting the Government's urge that this section applied, the Tax Court said:

"The substitution of common stock for bonds is not a cancellation or reduction of the liability represented by the bonds, no matter how much less the stock may be worth, since the assets are not thereby freed from obligation." While the bond loan has been terminated, the amount borrowed is now committed to capital stock liability instead of to the liability of a fixed indebtedness."

We are unable to accept this view of the statute. The acceptance of the stock for the bonds wiped out a direct debt liability, enforceable by legal action. The debt carried an interest obligation and priority of rights. The stock carried no right to interest and not even to dividends, unless surplus existed; and a declaration of distribution had been made. It carried no right to collect the sum represented by the investment therein. At best it is a right only to a proportionate distribution of the assets over and above all debts of the corporation, in case of liquidation.

As the Court said in *Eyster v. Centennial Board of Finance*, 94 U. S. 500, 502:

"The liability of a corporation to its stockholders on account of their stock is not a debt. The shares of a stockholder represent his proportion of the property of a corporation; and, upon the winding up of its affairs, the assets remaining after all liabilities are discharged are for division among the stockholders, according to their respec-

turned interest unpaid and not resulting in a tax benefit on any income tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the plan. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary, in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section." (Italics ours.)

"Sec. 268. Except as provided in section 270 of this Act, no income or profit taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in a plan under this chapter, or by a corporation organized or made use of for effectuating a plan under this chapter by reason of a modification in or cancellation in whole or in part of any of the indebtedness of the debtor in a proceeding under this chapter."

tive interest. The payment to stockholders upon such a division is for a dividend of the property divided, not for a debt owing by the corporation."

The words "cancelled or reduced," as used in this statute, are comprehensive. Given their ordinary or literal meaning, they cover a case such as is here presented. Here there was an elimination of the bonded indebtedness. Assume that the former bondholders, in accepting the stock in the new company, received all of the assets of the old company (they received only 90%) and the new company had the same assets as the old company, they still gave up their status as creditors with the correlative right to interest, to sue to collect a debt if default occurred, to priority against lesser and subsequent creditors. They also gave up the interest which they forgave.

If we search for the intent of Congress as affecting the construction of these words, the taxpayer is in no better position.

The financial crash of '29 caused values of real estate and buildings thereon to tumble. The Chandler Act dealt with the reorganization of companies which held such properties. It dealt with debtors that had outstanding mortgages and other indebtednesses in excess of the value of their real properties. When the reorganization of these debtors was completed, in many instances the indebtednesses were greatly reduced or cancelled. In the instant case the debt was entirely eliminated. In place thereof, stock of much less market value than the face value of the debt, was issued.

It would be both illogical and unfair to retain a fictitious depreciation basis for tax purposes when the actual valuation in the reorganization of the debtor was much less. Congress was dealing with realities. It sought not only to avoid injustice to the Government, but also prevented injustice being done to the taxpayer. It should be noted that Section 270 contained a provision which prevented the depreciation basis going below the fair value of the building.

If taxpayer's construction of this section be adopted, then a reorganized debtor could claim a depreciation based upon a value twice or three times as much as the real value of the building.

Our conclusion is that Sec. 270 applies to a case where there has been a reorganization and the existing debt either

cancelled or diminished and also to cases where stock in the new debtor is issued in place of such indebtedness. And this is so even though the par value (not the market value) of the stock was the same as the face value of the mortgage indebtedness.

This brings us to the consideration of the date of the application of Section 270 of the Bankruptcy Act, as amended by the Chandler Amendment. In other words, we meet directly, the query, Did Section 270 apply to years prior to the date of its enactment, that is, prior to the tax year of 1938?

It must readily be conceded that retroactive effect to legislation will never be given unless such purpose is expressly stated, or is to be inferred by clear intent, or by the necessary and unavoidable implications of the legislation. *Hassett v. Welch*, 303 U. S. 303; *U. S. v. Dakota Co.*, 288 U. S. 459; Mertens, Law of Fed. Income Taxation, Sec. 3.33; *Brewster v. Gage*, 280 U. S. 237.

On this theory, the Board of Tax Appeals held in *Commissioner v. Commodore*, 46 B. T. A. 718, that Sec. 270 did not apply to years prior to 1938. Its decision was affirmed by the Circuit Court of Appeals of the Sixth Circuit in 135 F. 2d. 89.

We think the legislative intent here is not left in doubt, for Congress in Sec. 276 (c) (3) expressly provided:

"Sections 268 and 270 of this Act shall apply to any plan confirmed under section 77 B before the effective date of this amendatory Act and to any plan which may be confirmed under section 77B on and after such effective date . . ."

In the face of this express statute, judicial search for Congressional intent becomes a somewhat idle, or futile task. Our inquiry, if limited at all, is restricted to the meaning of the words which Congress used, when in Sec. 276 (c) (3) it made specific provision for the effective date of the application of said Section 270, that is when it expressly provided that Sec. 270 was retroactive in its application.

Assuming doubt and uncertainty in the words of said Section 276 (c) (3) for the moment, it is interesting to note that Congress here dealt with both Section 270 and Section 268. The three sections, 268, 270, and 276, therefore,

should be read together. Sections 268 and 270 are complementary. Section 268 relieves the debtor corporation of a tax on any of its income represented by the cancellation of an indebtedness in a reorganization proceeding under Chap. X. We must read Section 270 in the light of this Sec. 268 tax exemption.

Debtor reorganization under the Bankruptcy Laws nearly always results in a reduction of the outstanding indebtedness. In fact, reorganizations are for the avowed purpose of avoiding the evil effects of over-indebtedness. This is accomplished, when the reorganizations are in good faith, by reduction or the elimination of all or a part of the debt burden.

Such a reduction of the debt of the reorganized debtor, however, might result in a so-called profit to the corporation. This occurs by reason of the lessening, or extinction, of its debt. By Section 268, Congress provided for this contingency and relieved the debtor from an income tax on such a possible charge of profit. On the other hand, were it not for Section 270, the debtor would profit unfairly. It would continue a depreciation base for tax purposes that is out of line with its actual value. It would be getting a benefit, which it should receive, under Section 268, but at the same time it would evade its taxes in so far as they reflected a false and exaggerated depreciation base.

Notwithstanding the logic which inheres in the relation of Sec. 268 and Sec. 270, and the reference to both of them in Sec. 276 (c) (3), we would not be inclined to go behind the date of the passage of the Act, unless the language of said Sec. 276 leads clearly and irresistibly to such a construction.

And so we come to the words of the statute, to-wit:

"Sections 268 and 270 of this Act shall apply to any plan confirmed under section 77B *before the effective date of this amendatory Act* and to any plan which may be confirmed under section 77B on and after such effective date

Given their ordinary meaning, the words "before the effective date of this amendatory Act" mean that it, the Act, applies to reorganizations which were confirmed before June 22, 1938, the date of the passage of Secs. 268, 270, and 276 (c) (3).

We are not, therefore, giving effect to any doubtful or veiled or unexpressed intention of Congress. We are giving effect to the words Congress used when it made Sections 268 and 270 retroactive in their application.

Should we limit the date in any manner? In the present case we are not required to go beyond bankruptcy reorganization tax cases which had not been closed and barred by the statute of limitations when the June, 1938 amendment became effective. The years to which the Commissioner attempted to apply Section 270 may well be called *open tax years*. As to such years both parties may obtain an adjustment. The taxpayer may get an adjustment under Sec. 268. The Commissioner may adjust the taxpayer's tax under Sec. 270. We hold that Sec. 276 (c) (3) makes Sec. 270 applicable to taxpayer's tax for all the years in controversy, 1935, 1936, 1937, and 1938.

Aside from the express language of the statute, it seems clear that the same application should be given to Sec. 270 as to Sec. 268.

Finally, if we give the same effective date of application to both Sections 268 and 270, we are dealing with realities, with facts as they are. We are relieving an involved debtor from an income tax on a profit which it did not make when its debts were reduced; and we are asking it to figure its depreciation on a basis which accords with the facts, not with figures that are fictional and have no connection with values of today. Why should we attribute to words of a statute a meaning which would continue the make-believe, water values that were wrung out of them in the reorganization proceedings.

That such a construction would violate no provision of our Constitution, we are satisfied. *Stockdale v. Ins. Cos.*, 87 U. S. 323; *Brushaber v. Union R. Co.*, 240 U. S. 1; *Cens. Utilities Co. v. Com.*, 84 F. 2d. 548; *Jackson v. Price*, 74 F. 2d. 707; *Wilgard Co. v. Com.*, 127 F. 2d. 514.

Taxpayer challenged the disallowance of two small items, to-wit, \$1291.44 and \$389.60, for decoration and repairs in the year 1937. The disallowances were made because the same sums for the same purposes had been claimed in taxpayer's 1936 tax return. The Tax Court held,

"Since we are satisfied from the evidence that petitioner is seeking for 1937 a deduction already taken and allowed for the prior year, respondent's disallowance is approved."

Our conclusion on this issue is that the evidence is conflicting, and we can not disturb a finding which has evidence to support it.

Our conclusion that Sec. 270 governs makes it unnecessary for us to consider the fact issue raised by the taxpayer for a charge made by the contractor, Henry, of ten per cent, or \$38,532.64, which he added to the building cost as a profit which he charged himself for erecting the building. The full reduction in the depreciation has not been made because Section 270 forbids the adjustment going lower than the fair market value. This being so, this item has no bearing in the outcome if said Section 270 applies.

In the appeal of the Commissioner, No. 8297, the order of the Tax Court is reversed with directions to enter an order in accord with the views here expressed. In the appeal of Claridge Apartments Company, No. 8296, those portions of the order from which this appeal is taken, are

AFFIRMED.

Endorsed: Filed December 1, 1943. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the first day of December, 1943, the following further proceedings were had and entered of record, to-wit:

Wednesday, December 1, 1943.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. Sherman Minton, Circuit Judge.

Hon. Walter C. Lindley, District Judge.

• • • (Caption—8296) • • •

This cause came on to be heard on the transcript of the record from the Tax Court of the United States and was argued by counsel:

On consideration whereof, it is ordered and adjudged by this Court that the decision of the Tax Court of the United States entered in this cause on January 9, 1943, be, and the same is hereby, affirmed as to the portions of said decision herein appealed from.

And on the same day, to-wit: On the first day of December, 1943, the following further proceedings were had and entered of record, to-wit:

Wednesday, December 1, 1943.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

(Caption—8297)

This cause came on to be heard on the transcript of the record from the Tax Court of the United States and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the decision of the Tax Court of the United States entered in this cause on January 9, 1943, be, and the same is hereby reversed, and that this cause be, and the same is hereby, remanded to the said Tax Court of the United States with directions to enter an order in accord with the views expressed in the opinion of this Court.

And afterwards, to-wit: On the twenty-second day of December, 1943, the following further proceedings were had and entered of record, to-wit:

Saturday, December 22, 1943.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

(Caption—8296 and 8297)

It is ordered by the Court that the petition for a rehearing of this cause be, and it is hereby, denied.

And afterwards, to-wit: On the twenty-fifth day of January, 1944, there was filed in the office of the Clerk of this Court, a Stipulation for Record, which said stipulation is in the words and figures following, to-wit:

(Caption—8296-8297) • •

STIPULATION.

It is stipulated that the supplemental record, for the purpose of filing petition for certiorari, shall include only the following:

1. The opinion of the Circuit Court of Appeals.
2. The judgment of the Circuit Court of Appeals.
3. The order denying the petition for rehearing and that all captions may be omitted.

Wm. E. Hughes,
Attorney for Claridge Apartments.
Charles Fahye,
Solicitor General,
Samuel S. Clark,
Assistant Attorney General,
Attorney for Commissioner of
Internal Revenue.

Endorsed: Filed January 25, 1944. Kenneth J. Carrick,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed as called for by the designation for record on petition for writ of Certiorari, filed on the twenty-fourth day of January, in:

Claridge Apartments Company, an
Illinois Corporation,

Petitioner.

8296

vs.

Commissioner of Internal Revenue,

Respondent.

Petition for Review of Decision of the Tax Court of the United States.

Commissioner of Internal Revenue,

Petitioner.

8297

vs.

Claridge Apartments Company, an
Illinois Corporation,

Respondent.

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 3rd day of February, A. D. 1944.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 28

ORDER ALLOWING CERTIORARI—Filed March 27, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 29

ORDER ALLOWING CERTIORARI—Filed March 27, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3268)